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STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION

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STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION

By

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NOTE

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CONTENTS

	Introduction	3
I.	Bribery	6
II.	Intimidation	36
III.	Fraud	56
IV.	The Regulation of Political Advertising	91
V.	State Regulation of Campaign Contributions and Expenditures	104
VI.	The Power of the Federal Government over Elections	150
VII.	Federal Regulation of Campaign Contributions and Expenditures	180
VIII.	Summary and Conclusion	243
	Appendix. State Laws dealing with Bribery, Intimidation, Fraud, Political Advertising, and the Use of Campaign Funds	257
	Bibliography	292
	Index	315

STATE AND FEDERAL CORRUPT-PRACTICES LEGISLATION

INTRODUCTION

One of the outstanding characteristics of the history of the past century and a half has been the conversion to and trial of a democratic form of government by most of the important nations. Country after country has changed from an autocratic or aristocratic type of government to one at least in form and theory more democratic. The transition was, however, in few cases sudden and complete. In spite of the fact that our Declaration of Independence held among its self-evident truths that all men are created free and equal, and that governments should secure their just powers from the consent of the governed, even in the United States large numbers of white men were excluded from the suffrage until well along in the nineteenth century because they could not meet the property and other qualifications for voting, and legal discriminations preventing negroes from voting were not removed throughout the country until 1870.[1] It was the latter part of the nineteenth century, then, before the principle of manhood suffrage had received general acceptance in the United States, and the twentieth century was well under way when the Nineteenth Amendment to the Federal Constitution, giving women the right to vote throughout the United States, was adopted.

The theory of adult suffrage is that each adult shall have a voice in the determination of the policies and operations of his government, such voice usually to be

[1] It is, of course, well known that despite the Fifteenth Amendment to the Constitution of the United States the Southern States have by various devices prevented the great majority of negroes from voting. A discussion of issues arising from the Fifteenth Amendment will be found in chapter six.

expressed through the medium of the ballot box at election time. In practice, serious difficulties are in the way of securing an honest, intelligent expression from all voters. Many voters lack the intelligence necessary to form decisions for themselves, others are uninterested in the processes of government, and still others are willing for material consideration to vote as others desire. Primarily because of the presence of these types of voters the political machine with its boss has been able to control the machinery of government in many parts of the United States.

The last half century has witnessed various movements to shake off boss domination and actually to place the control of the governing agencies in the hands of the people. Among these movements have been those for the introduction of the Australian ballot, nominations by direct primary, the short ballot, the initiative, the referendum, the recall, and corrupt-practices legislation.

It is the purpose of this study to make a survey of the corrupt-practices legislation which has been enacted in the United States by both the state and federal governments, and to examine the construction placed on these statutes by judicial interpretation. With this purpose in mind, the study can naturally make no attempt to cover the whole field of political corruption, for the legal restrictions have only been applied to those more flagrant practices which past experience has shown to be so pernicious that sentiment against them has been crystallized into statutory prohibitions.

James Bryce has written that

> The rational will which the citizens are expected to possess and to express by their votes may be perverted in three ways: by

fear, when the voter is intimidated; by corrupt inducements, when he is bribed; by fraud, when the votes are not honestly taken or honestly counted.[2]

The first three chapters of the present study consider these forms of perversion, give a synopsis of the state laws dealing with these subjects, and point out the manner in which these statutes have been construed by the courts. Chapter four deals with the very important problem of state regulation of political advertising. In chapter five the provisions of the later, more detailed state legislation requiring publicity for campaign contributions and expenditures, prohibiting or restricting certain types of contributions, and regulating expenditures in campaigns are shown, and reasons for the enactment of this legislation are pointed out. The next two chapters are concerned with the regulation of elections by the federal government. The first of these chapters attempts to formulate from federal court decisions the exact division of power between the federal and state governments over the control of elections, and the second chapter makes a historical survey of federal corrupt-practices legislation. The final chapter states certain conclusions concerning these attempts to prevent election abuses and offers suggestions for further legislation.

The belief is not held that this study will solve the problem of corrupt practices at elections, but a careful analysis of the present status of this type of legislation should at least show wherein present regulations are proper and effective, and wherein, if at all, further legislation seems desirable.

[2] *Modern Democracies*, I, 417.

CHAPTER I

BRIBERY

PROBABLY the oldest, most prevalent, and most effective manner of unlawful control of elections is bribery of the voters. Vast numbers of the electorate are entirely uninterested in the results of the elections, and these are the tools with which the party machine is able to keep itself entrenched in power. Many voters sell their votes for a direct money payment; others are influenced by promise of office; many more feel themselves pledged to vote as the party leader directs because of some favor that has been granted. Jane Addams draws a graphic picture of the methods used to control votes in Chicago:

> The Alderman gives presents at weddings and christenings. He seizes these days of family festivities for making friends . . . . He secures passes from railroads when his constituents wish to visit friends; he buys tickets galore for benefit entertainments. . . . He saves the poorest of his constituents from the awful horror of burial by the county; for the more prosperous he sends extra carriages.[1]

This method of gaining favor with certain classes of voters is not limited to Chicago. In *Plunkitt of Tammany Hall*, a Tammany ward leader frankly discloses the methods by which his powerful organization holds the votes of New York City. To illustrate these methods he gives the schedule of his work for one day. His working day began at 2 A.M. and lasted until 11 P.M. During this time he interceded with the courts for his constituents, found a home for people whose house had

[1] Jane Addams, "Why the Ward Boss Rules," in the *Outlook*, 58 (1898), 379.

been burned, attended two funerals—one Hebrew, and one Italian—attended a church fair where he took chances on everything, and ended the day by attending a Hebrew wedding reception, making the young couple happy with an expensive present.[2] Testimony before the Reed Committee investigating the Pennsylvania Senatorial primary of 1926 showed that the Vare machine in Philadelphia looks after the poorer voters in a similar manner. According to this testimony the Vare machine is especially solicitous in protecting its followers when they become involved in difficulties before the courts.[3]

Direct bribery is illegal, but it is exceedingly difficult to secure proof that any voter has been bribed. There are usually only two persons present at the transaction, the one giving the bribe, the other receiving it, and it is next to impossible to secure information from either of these. The promise of employment or appointment to office in order to secure votes is such an intangible sort of thing that prosecution is almost impossible. But in the case of the above described activities of the petty boss, what is to be the dividing line between his acts of bribery and his philanthropic deeds? It is exceedingly difficult in all these cases to draw a sharp line between what is bribery and what is not, but at the end of this chapter, after a survey of the various statutes against bribery and of many judicial interpretations of these statutes, an attempt will be made to state what actions are held to be bribery.

[2] W. L. Riordon, *Plunkitt of Tammany Hall*, pp. 170-3. Cf. pp. 46-53. Discussion of "To Hold Your District—Study Human Nature and Act Accordin'."

[3] Hearings before a special Committee Investigating Expenditures in Senatorial Primary and General Elections. United States Senate, 69th Cong., 1st Sess., Pursuant to Sen. Res. 195, pp. 611, 621.

It is only occasionally that it is possible even to guess the number of bribed voters participating in any election. Sometimes there is an exposure in particular districts in which the extent of bribery is actually shown. An example of this occurred in Adams County, Ohio, where, after the election of 1912, there were 1679, or 26 per cent, of the county's voters who admitted having been bribed and were disfranchised.[4] Cases where such accurate determination is possible are very rare. Mr. W. M. Ivins, a close student of New York City politics, estimated that in 1887 one-fifth of the voters of that city had been bribed by parties or candidates on election day.[5]

Although any sort of accurate information concerning the exact number of bribed voters is almost impossible to secure, it is undoubtedly true that despite stringent laws in all the states against bribery, at every election many votes are cast, not because they are expressing the will of the voter, but because the voter has been influenced by some material consideration.

The purchase and sale of votes is today made a statutory offense in every country where any sort of modern voting system has been established. In England and the United States where the common law exists, bribery was recognized as a crime prior to the passage of statutes against it. In a decision made in 1762 Lord Mansfield said: "Bribery at elections for members of Parliament must undoubtedly have always been a crime at common law."[6] The reasons why bribery should be

[4] Judge A. Z. Blair, "The Adams County Case," in *McClure's*, 38, 28.
[5] W. M. Ivins, *Machine Politics and Money in Elections in New York City*, p. 72.
[6] Rex *v.* Pitt, 3 Burrows 1335, 1762; also Plympton's Case, 2 Ld. Raym. 1377, 1724.

considered an offense at common law are well set out in a decision of the Maine Supreme Judicial Court in 1881:

It is claimed that wilfully and unlawfully attempting to influence an elector to give in his ballot by offering or paying him money therefor is not criminal. We think it is. What the law deems criminal and seeks to prevent is the corrupting of the elective franchise. Every elector not only has the right to vote or not to vote according to his judgment of duty, but he has an interest that every other elector shall exercise the franchise in the same manner, without being influenced by the corrupt payment of money, or other unlawful means. If the elector determines that under all circumstances, it is not his duty to vote, but is induced to cast his ballot in the election by the corrupt payment of money, the ballot does not represent the free and unbiased act of the elector, but it represents the money paid for it; and when counted neutralizes the ballot of the honest voter. When such corrupt influences are used, the result of the election does not depend upon the honest, uncorrupted judgment of the electors, but upon the amount of money paid to corrupt them. It is an offense against the people, and has been so regarded in England as well as this country.[7]

The framers of our various state constitutions, recognizing the dangers to a popular government if bribery of voters should become prevalent, have not been satisfied to leave bribery simply a crime at common law. From the date of the drafting of the earliest state constitutions down to the present there have been in most of them specific provisions concerning bribery at elections. Twelve states have placed the following identical section in their organic law.

Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted

[7] State *v.* Jackson, 73 Me. 91, 1881; also Curran *v.* Taylor, 92 Ky. 537, 1892. W. O. Russell, *Crimes,* I, 638. J. P. Bishop, *Criminal Law,* I, par. 471.

of bribery. . . . The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper conduct.[8]

It has been provided directly in the Constitutions of seventeen states that persons guilty of buying votes shall be disqualified from holding office.[9]

[8] Alabama	Constitution of 1819	Art. 6	Sec.	5
Alabama	Constitution of 1865	Art. 1	Sec.	35
Alabama	Constitution of 1867	Art. 1	Sec.	36
Alabama	Constitution of 1875	Art. 1	Sec.	34
Alabama	Constitution of 1901	Art. 1	Sec.	33
Arkansas	Constitution of 1868	Art. 1	Sec.	19
California	Constitution of 1849	Art. 11	Sec.	18
Connecticut	Constitution of 1818	Art. 6	Sec.	6
Florida	Constitution of 1839	Art. 6	Sec.	13
Florida	Constitution of 1865	Art. 6	Secs.	8-9
Florida	Constitution of 1868	Art. 5	Sec.	23
Florida	Constitution of 1885	Art. 3	Sec.	26
Kansas	Constitution of 1855	Art. 2	Sec.	10
Kentucky	Constitution of 1799	Art. 6	Sec.	4
Louisiana	Constitution of 1812	Art. 6	Sec.	4
Louisiana	Constitution of 1845	Title 6	Art.	92
Louisiana	Constitution of 1852	Title 6	Art.	93
Louisiana	Constitution of 1864	Title 7	Art.	95
Louisiana	Constitution of 1868	Title 6	Art.	103
Mississippi	Constitution of 1817	Art. 6	Sec.	5
Mississippi	Constitution of 1832	Art. 7	Sec.	4
Oregon	Constitution of 1857	Art. 2	Sec.	8
South Carolina	Constitution of 1868	Art. 1	Sec.	33
South Carolina	Constitution of 1895	Art. 1	Sec.	9
Texas	Constitution of 1845	Art. 7	Sec.	4
Texas	Constitution of 1866	Art. 7	Sec.	4
Texas	Constitution of 1868	Art. 12	Sec.	2
Texas	Constitution of 1876	Art. 16	Sec.	2
[9] Alabama	Constitution of 1819	Art. 6	Sec.	4
Arkansas	Constitution of 1836	Art. 4	Sec.	13
Arkansas	Constitution of 1874	Art. 3	Sec.	6
Illinois	Constitution of 1818	Art. 2	Sec.	30
Indiana	Constitution of 1816	Art. 11	Sec.	5
Indiana	Constitution of 1851	Art. 2	Sec.	6
Kansas	Constitution of 1858	Art. 2	Sec.	4
Kansas	Constitution of 1859	Art. 5	Sec.	6
Kentucky	Constitution of 1799	Art. 6	Sec.	3
Kentucky	Constitution of 1850	Art. 8	Sec.	3
Kentucky	Constitution of 1890	Sec. 150		
Louisiana	Constitution of 1812	Art. 6	Sec.	3
Louisiana	Constitution of 1845	Title 6	Art.	91
Louisiana	Constitution of 1852	Title 6	Art.	92
Louisiana	Constitution of 1864	Title 7	Art.	93

The following identical provision is found in Constitutions of Ohio, Pennsylvania, Tennessee, and Vermont:

Any elector who shall receive any gift or reward for his vote in meat, drink, money, or otherwise, shall suffer such punishment as the laws shall direct. And any person who shall directly or indirectly give, or bestow such reward, shall thereby be rendered incapable for two years to serve in the office for which he was elected, and be subject to such further punishment as the legislature shall direct.[10]

By constitutional enactment six states have provided that before entering on the duties of the office to which they have been elected, certain officials must take oath that they have not attempted to influence voters by bribery.[11]

Louisiana	Constitution of 1868	Title 6	Art.	99
Louisiana	Constitution of 1879	Art. 187		
Maryland	Constitution of 1776	Sec. 54		
Maryland	Constitution of 1851	Art. 1	Sec.	2
Maryland	Constitution of 1864	Art. 1	Sec.	5
Maryland	Constitution of 1867	Art. 1	Sec.	3
Massachusetts	Constitution of 1780	Ch. 6	Sec.	2
Mississippi	Constitution of 1817	Art. 6	Sec.	4
Mississippi	Constitution of 1868	Art. 4	Sec.	18
Mississippi	Constitution of 1890	Art. 4	Sec.	44
Missouri	Constitution of 1820	Art. 3	Sec.	15
Missouri	Constitution of 1865	Art. 2	Sec.	15
New Hampshire	Constitution of 1784			
New Hampshire	Constitution of 1792	Sec. 46		
New Hampshire	Constitution of 1902	Art. 95		
New Hampshire	Constitution of 1912	Art. 95		
Ohio	Constitution of 1851	Art. 5	Sec.	4
Oregon	Constitution of 1857	Art. 2	Sec.	7
Pennsylvania	Constitution of 1873	Art. 2	Sec.	7
Rhode Island	Constitution of 1842	Art. 9	Sec.	2
Texas	Constitution of 1876	Art. 16	Sec.	5
[10] Ohio	Constitution of 1802	Art. 7	Sec.	2
Pennsylvania	Constitution of 1776	Sec. 32		
Tennessee	Constitution of 1796	Art. 9	Sec.	3
Tennessee	Constitution of 1870	Art. 10	Sec.	3
Vermont	Constitution of 1779	Ch. 2	Sec.	29
Vermont	Constitution of 1786	Ch. 2	Sec.	31
Vermont	Constitution of 1793	Ch. 2	Sec.	34
[11] Georgia	Constitution of 1789	Art. 1	Sec.	15
Georgia	Constitution of 1798	Art. 1	Sec.	19

Nineteen states from time to time by constitutional enactments have declared persons guilty of bribery in connection with elections disqualified from voting.[12]

Other states have been satisfied merely to place in their Constitutions a section providing that the legislature shall pass laws to secure the purity of elections and to guard against abuses of the elective franchise.[13]

Georgia	Constitution of 1865	Art.	2	Sec.	4
Illinois	Constitution of 1870	Art.	4	Sec.	5
Maryland	Constitution of 1851	Art.	1	Sec.	3
Nebraska	Constitution of 1875	Art.	14	Sec.	1
Pennsylvania	Constitution of 1873	Art.	7	Sec.	1
Wyoming	Constitution of 1889	Art.	6	Sec.	20
[12] Alabama	Constitution of 1865	Art.	8	Sec.	1
Alabama	Constitution of 1875	Art.	9	Sec.	3
Alabama	Constitution of 1901	Art.	8	Sec.	182
Arkansas	Constitution of 1868	Art.	8	Sec.	5
Idaho	Constitution of 1890	Art.	6	Sec.	3
Kansas	Constitution of 1859	Art.	5	Sec.	2
Kentucky	Constitution of 1890	Sec.	145		
Louisiana	Constitution of 1864	Title	7	Art.	93
Louisiana	Constitution of 1868	Title	6	Art.	99
Louisiana	Constitution of 1879	Art.	187		
Maryland	Constitution of 1851	Art.	1	Sec.	2
Maryland	Constitution of 1864	Art.	1	Sec.	5
Maryland	Constitution of 1867	Art.	1	Sec.	3
Minnesota	Constitution of 1857	Art.	4	Sec.	15
Mississippi	Constitution of 1868	Art.	4	Sec.	18
Missouri	Constitution of 1820	Art.	3	Sec.	15
Missouri	Constitution of 1865	Art.	2	Sec.	15
New Jersey	Constitution of 1844	Art.	2	Sec.	2
New York	Constitution of 1821	Art.	2	Sec.	2
New York	Constitution of 1846	Art.	2	Sec.	2
New York	Constitution of 1894	Art.	2	Sec.	2
Ohio	Constitution of 1851	Art.	5	Sec.	4
Pennsylvania	Constitution of 1873	Art.	8	Sec.	8
South Carolina	Constitution of 1895	Art.	2	Sec.	6
Utah	Constitution of 1895	Art.	4	Sec.	6
Virginia	Constitution of 1850	Art.	3	Sec.	1
Virginia	Constitution of 1864	Art.	3	Sec.	1
Virginia	Constitution of 1870	Art.	3	Sec.	1
Virginia	Constitution of 1902	Art.	2	Sec.	23
West Virginia	Constitution of 1863	Art.	3	Sec.	1
West Virginia	Constitution of 1872	Art.	4	Sec.	1
Wisconsin	Constitution of 1848	Art.	3	Sec.	6
[13] Arizona	Constitution of 1912	Art.	7	Sec.	12
Colorado	Constitution of 1876	Art.	7	Sec.	11
Delaware	Constitution of 1897	Art.	5	Sec.	1
Idaho	Constitution of 1890	Art.	6	Sec.	4

The legislatures of all the states have enacted laws carrying out or supplementing the provisions of their Constitutions against bribery at elections. In those states whose Constitutions contain no such provisions, the legislatures have enacted similar laws under authority of the general police power vested in the state legislatures. These state enactments are of various kinds and differ in the minuteness with which they define bribery as a crime.

Every state in the union has a general statutory provision making it unlawful to give, offer, or promise anything of value to any person for his aid or influence at elections.[14]

While each of the forty-eight states provides for the punishment of the bribe-giver, only forty-one states penalize the receiver of the bribe.[15] The seven states having no laws making the receiving of anything of value to influence elections illegal probably work on the

Maryland	Constitution of 1851	Art. 1	Sec. 3
Maryland	Constitution of 1864	Art. 1	Sec. 6
Michigan	Constitution of 1850	Art. 7	Sec. 6
Michigan	Constitution of 1908	Art. 3	Sec. 8
Mississippi	Constitution of 1890	Art. 12	Secs.247-8
Missouri	Constitution of 1875	Art. 8	Sec. 11
Montana	Constitution of 1889	Art. 9	Sec. 9
Nevada	Constitution of 1864	Art. 2	Sec. 6
New Mexico	Constitution of 1912	Art. 7	Sec. 1
North Dakota	Constitution of 1889	Art. 5	Sec. 129
Rhode Island	Constitution of 1842	Art. 2	Sec. 6
South Carolina	Constitution of 1865	Art. 4	
Tennessee	Constitution of 1870	Art. 4	Sec. 1
Texas	Constitution of 1876	Art. 6	Sec. 4
Virginia	Constitution of 1902	Art. 2	Sec. 36
West Virginia	Constitution of 1863	Art. 3	Sec. 12
West Virginia	Constitution of 1872	Art. 4	Sec. 11
Wyoming	Constitution of 1889	Art. 6	Sec. 1

Constitutions examined in B. P. Poore, *Charters and Constitutions;* F. N. Thorpe, *American Charters, Constitutions and Organic Laws, 1492-1908,* and Chas. Kettleborough, *State Constitutions.*

[14] See Table 1, Column 1.

[15] See Table 1, Column 2.

theory that the bribe giver is the more guilty, since in most cases the initiative in the purchase of votes comes from him, and by not penalizing the bribe-taker it will be easier to secure information leading to the punishment of the more guilty person.

In construing the general statutory provisions against bribery at elections, the courts, on the whole, have adopted an attitude favorable to their strict enforcement. This may have been because of the extreme difficulty of securing adequate information for a bribery indictment, which has led to the result that if a case reached a court of record, the proof of an intent to bribe must have been very strong. The fact remains, however, that most courts have earnestly tried to find if this intent was present, and to apply the acts of the legislatures to all the cases which could be brought within their range.

In a leading Indiana case, State *v.* Downs,[16] the court showed that it would not throw a bribery indictment out of court because of a mere technicality. Under the state law it was illegal to influence, or to attempt to influence, a voter by offer or payment of money to vote for any candidate. The defendant was charged with the payment of two dollars to influence a voter to support the Republican ticket. The court said:

> Neither in the language, nor in the spirit of the statute, is there such narrowness as to permit a distinction between the voting of a ticket and the voting for a candidate. In this state we vote for candidates by casting our ballots, which consists of the tickets of the various political parties. It is against the attempt to influence the vote of an elector that

[16] 148 Ind. 324, 1897.

the law is directed, and it is not limited to an attempt in favor of or against a particular candidate or set of candidates.

The courts have consistently held that the act of bribery is complete with the offer or payment of money or anything of value to influence a vote. Proof is not necessary that the bought vote was actually cast. It was said in State *v.* Bedford[17] that

If money were paid to and received by appellee for the purpose of inducing him to vote at the election referred to, it is immaterial which way he voted, or whether he voted at all. The gist of the offense is the receiving the money for the purpose of inducing him to vote.

Commenting on a similar case (Commonwealth *v.* Roberts),[18] the Kentucky Court of Appeals said:

The party who accepted the bribe may not in fact have voted at all, or he may have voted for another person . . . than the one he was bribed to vote for; but, nevertheless, he would be guilty under the statute if in consideration of the bribe he agreed to vote for a certain person . . . or to refrain from voting for any person. If it was necessary that the indictment should charge, and the evidence show, that the person accepting the bribe voted for a particular candidate . . . . and the voter marked his own ballot, it would be difficult and many times impossible to secure a conviction, although there might be sufficient evidence to show that he accepted the bribe and agreed to vote for a certain candidate.

In addition to the statutes making both the purchase and sale of votes a criminal offense, Indiana permits the bribed voter to sue the bribe-giver for damages.[19] It had been found exceedingly difficult to secure infor-

[17] 148 Ind. 297, 1897.
[18] 145 Ky. 290, 1911. Cf. State *v.* Milby, 26 Wash. 661, 1901; State *v.* Barr, 23 Del. 340, 1909.
[19] Indiana, Acts of 1889, p. 267.

mation leading to conviction for bribery, and by offering a premium for proof, it was expected that such information would more easily be obtained. The courts have held, however, that there is more justification for such a statute than the mere mechanical one of helping to secure information.

> It will not do to say that a person who is induced to vote for any candidate by payment of money is not injured. . . . Under temptation to which he was subjected, he has bartered his honor, his manhood, his political freedom, his sovereignty. . . . While the body politic has suffered greatly, the loss he has sustained is infinitely more.[20]

In Thompson *v.* State[21] this provision was upheld as a measure to prevent the use of economic pressure to influence votes. The court said:

> It is not always only the corrupt or dishonest voter that when tempted will part with his honor . . . , for oftentimes circumstances are such that to refuse means, not only poverty and want for the voter himself, but hunger, misery, and suffering for his family. When the wealth of the rich, or the strong and powerful influence of the employer is used to so debase mankind, it is well that the law has placed its protecting arm about those so unfortunate as to be subjected to such temptation.

In their interpretation of the statutes against bribing voters, the courts hold that bribery may extend much further than the direct purchase and sale of votes. That the purchasing of a certificate of registration for the purpose of preventing an elector from voting is bribery has been definitely settled. This question has arisen most frequently in Kentucky, and there the court has said:

[20] State *v.* Schoonover, 135 Ind. 526, 1893.
[21] 161 Ind. App. 84, 1896.

The person who sells his certificate sells his vote at the election; for he cannot vote without the certificate. To buy him not to vote is to buy his vote. There is no difference in the eye of the statute between the person who for money votes for a certain candidate, and the person who for money refrains from voting. The only practical difference between buying a vote to be cast for a certain ticket, and buying a vote not to be cast at the election, is that the latter is a safer way of investing the money.[22]

With the introduction of the primary system of nominating candidates, most of the states extended the application of their acts prohibiting certain abuses at the general elections to the primary elections. The constitutionality of this extension has been contested in many places. The chief point at issue has been: Do primary elections fall within the constitutional provisions empowering the legislatures to make regulations for elections? There is no unanimity of opinion among the state courts concerning this question, but the more generally accepted view seems to follow the line of reasoning laid down by the Pennsylvania Supreme Court in the case of Leonard *v.* Commonwealth.[23] In this case it was contended that the constitution only empowered the legislature to regulate general elections, since at the time of framing the constitution, primaries were unknown. But the court paid little attention to this objection. It held that

The constitution provides for the future as well as for the present. Hence, when it speaks of the violation of any election law, it does not mean merely such election laws as were in force when it was adopted. . . . Primary elections and nominating conventions have now become a part of our great

[22] Commonwealth *v.* Glass, 140 Ky. 589, 1910; also, Commonwealth *v.* Roberts, 145 Ky. 290, 1911; Skain *v.* Milward, 138 Ky. 200, 1910.
[23] 112 Pa. St. 607, 1886.

political system, and are welded and riveted into it so firmly as to be difficult of separation. The act of 1881 recognizes this fact; it treats primary elections as part of a great system; it declares them to be elections to be regulated by law to some extent, and prescribes and punishes certain frauds committed thereat. It concerns elections in a most important sense. . . . The act of 1881 was passed to give effect to the constitutional provision, and it matters little at what stage of the campaign the fraud is committed. It is as much an election law when it strikes at the fraud at the primary elections as when it arrests the fraudulent ballot just as it is ready to be dropped into the box at the general election.

The Supreme Court of North Dakota has adopted a similar line of reasoning, stating:

It is true that at the time of the adoption of the constitution a primary election was unknown in this state, but constitution makers are not presumed to foresee and take into consideration every new condition which may arise or every new remedy which may be devised for application to old conditions. . . . When the constitution says "any election" in prescribing the qualifications of voters, it does not mean any election then known to the people of the State. It means not only the elections then provided for by the laws and constitution, but any election which may thereafter be established or required to be held pursuant to law.[24]

Even those courts which hold that a primary is not an election within the constitutional meaning do not deny that the legislature may enact laws making such abuses as bribery at the primaries illegal. The Missouri Supreme Court in State *v.* Taylor[25] laid down the following doctrine: A primary is not an election in the constitutional sense, but

[24] Johnston *v.* Grand Forks Co., 16 N. D. 363, 1907. Cf. Lepinsky *v.* State, 7 Ga. App. 285, 1909; Spier *v.* Baker, 120 Cal. 570, 1898; State *v.* Hirsch, 125 Ind. 211, 1890; Ashford *v.* Goodwin, 103 Tex. 491, 1910; Ruling Case Law, vol. 9, p. 1072.

[25] 220 Mo. 619, 1909.

The legislature does not need express constitutional authority to legislate on a subject, but only lack of a constitutional prohibition. Hence, although the framers of the constitution used the words "elections by the people" in the sense of choosing a person for office by the votes of electors, and not in the sense of nominating a candidate for any office by a political party, there is nothing in the constitution which prohibits the legislature from providing for the conduct of primary elections and placing them under the safeguards and protection which the Constitution itself throws around elections for office.

Following this line of reasoning the Ohio Supreme Court has upheld primary regulations under the general police power vested in the state legislatures.[26]

It is seen, then, that regardless of whether the courts have decided that primary elections are elections in the constitutional sense, they have in every case made it possible for the state legislatures to pass regulations to prevent bribery, fraud, or intimidation at primary elections.[27] Further discussion of the regulation of primaries is reserved for later chapters.

Quite frequently candidates secure support by promises of appointment to office in case the candidate is elected. Ethically this is as clear a case of bribery as if actual money had been paid to secure votes. Almost one-half of the states have deemed this a matter of such importance that they have removed all doubt as to whether promises of appointment should be considered offers of bribes by directly making such acts illegal.[28]

[26] State *v.* Felton, 77 Ohio St. 554, 1908. Cf. Kenneweg *v.* Allegheny Co. Comms., 62 Atl. (Md) 250, 1905.

[27] After decision of the U. S. Supreme Court in the Newberry Case that the federal government cannot regulate primaries, it is necessary for any regulation of primaries to be made by states. See Chapter 7 for further discussion. See C. E. Merriam, *Primary Elections,* Chapter 6, for a general discussion of the constitutionality of primary legislation.

[28] Table 1, Column 3.

These statutes extending the penalties against bribery to the promise of appointment to office in exchange for votes and political influence have been given favorable consideration when they have been reviewed by the courts.[29] It is not necessary that the promise be given directly to the person whose vote and influence is desired to be secured. A candidate for mayor of Fort Smith, Arkansas, gave his word of honor to one person that if another person would support his candidacy, he would, if elected, support the second person for city attorney. The Arkansas Supreme Court held that this promise was the offer of a bribe:

> The statute does not require that the promise be made to the person to whom the office is to be given. . . . It meets the requirement of the statute if it be alleged and proved that the promise was made to one person . . . and the office to be received either by the person to whom the promise is made or by some other person.[30]

But, unless there is a positive statute to that effect, it is insufficient to show that payment was made to induce another candidate to quit the race. It must be shown that the retiring candidate also agrees to vote for and support the candidate who makes the payment.[31] It has also been held in at least one jurisdiction that it is not illegal for a candidate for sheriff to promise his opponent that, if he will retire and assist the first candidate, the first candidate, if elected, will appoint the opponent deputy sheriff.[32] This seems a rather narrow interpretation of the statute prohibiting the offer of

[29] Cf. Mason *v.* State, 58 Ohio St. 30, 1898. State *v.* Towns, 153 Mo. 91, 1899.

[30] Wright *v.* State, 133 Ark. 76, 1918.

[31] State *v.* Bland, 144 Mo. 534, 1898.

[32] Commonwealth *v.* Sheeran, 145 Ky. 361, 1911.

appointment to secure votes, for while it was not specifically alleged that the retiring candidate promised to vote for the first candidate, yet he did promise to assist him. The clear implication from this is that he promised to vote for the first candidate and to use political influence in his favor.

It is recognized that treating voters to drinks, cigars, or giving them presents in some other form is one of the most insidious ways of influencing votes, as well as one of the most difficult practices to stop. Seventeen states have laws that candidates shall not directly or indirectly give meat, drink, or other entertainment to influence voters. Usually the provisions of these statutes are operative for only a limited period before elections.[33]

Whenever there have been property or tax-paying qualifications for voters the machines have attempted to evade them or actually use them to their advantage. The way in which Tammany evaded the early property qualifications is thus described:

> The practice of the previous year of the collective buying of property to meet the voting qualifications was continued. Under the society's encouragement, and with money probably furnished by it, thirty-nine poor Republicans in the election of 1807 bought a house and lot of ground in the fifth ward. Their votes turned the ward election.[34]

In La Follette's *Autobiography* a much later instance of this type of evasion is recorded. Certain Republican leaders attempted to get Mr. La Follette, then a member of the House of Representatives, to vote for the Nicaraguan Canal Bill. He was told that if the bill

[33] Table 1, Column 4.
[34] Myers, *History of Tammany Hall* (Boni and Liveright), p. 15.

passed there would be a contribution of $100,000 to the Republican campaign fund, and a scheme was explained to him by which it was hoped, with the use of this money, to carry Delaware in the election of 1888. He was told that in Delaware at that time only persons owning real estate could vote, and that it was proposed to use this fund, or a part of it, to buy a tract of swamp land and parcel it out among the laboring men so as to qualify them as voters.[35]

Some of the states today maintain payment of the poll tax as a requirement for voting, and in a few of these states it is declared unlawful for any one to pay the poll tax of another for the purpose of influencing his vote.[36] It will be noticed that all but one of the states where such payments are declared illegal are southern states where the poll tax is used primarily as a means of preventing the negro from voting. The Texas Supreme Court upheld this provision in the following language:

> It would not be denied that the Legislature could pass laws to prevent, for money or merchandise, the bribery of the elector and the corruption of the ballot. Whether such corruption or corrupt control finds expression in one form or another can, in law or in fact, make little difference. The fact that such improper or corrupt control is indirect cannot make its influence and effect less baleful or ruinous. [37]

In Pennsylvania it has been held that "Anything, either in payment of taxes for him or in any other way, which will induce the voter to cast his ballot contrary to his

[35] Pp. 78-80.

[36] Arkansas, Acts of 1913, c. 308, sec. 10; Florida, Compiled Laws 1914, sec. 3826A; Pennsylvania, Shannon's Anno. Code, 1917, sec. 6847A1; Texas, Civil Stats., 1914, sec. 2946.

[37] Solon *v.* State, 54 Tex. Crim. Rep. 261, 1908. Cf. Watts *v.* State, 61 Tex. Cr. 364, 1911; Whittaker *v.* Watson, 68 Ark. 555, 1901.

wishes . . . is but a species of bribery, and cannot be tolerated by the law."[38]

Four states have declared it illegal for a candidate while soliciting support to promise any particular individual or association of individuals that if he is elected he will perform any official act for the benefit of such individuals, or will support or oppose any particular bill or measure in the interest of such individuals.[39] These same statutes also provide that no individual or association of individuals shall seek to obtain such promises from candidates in return for their support. These statutes, however, do not prohibit the candidate from declaring his position concerning some general issue. The statute of Illinois, for example, after making the prohibitions stated above, provides that "nothing herein contained shall be construed to prevent any candidate from making orally or in writing, in private or in public, a statement as to his view, belief, opinion, or position with respect to any public question or issue." Under this statute there is room for much difference of opinion as to when a candidate is soliciting support by specific promises, or when he is simply stating his opinion on public questions and issues. Certainly the candidate is permitted to declare his support of the issues advocated in his party platform, and surely he is permitted to state his views on matters of general public interest. It is equally certain that these laws intend that a candidate shall not make promises in favor of narrow private interests. The burden of decision in border line cases is thrown on the courts.

[38] Contested Election of Harry White, 4 Pa. Dist. 363, 1895.

[39] Illinois, Laws of 1917, p. 455, sec. 1; Kentucky, Carroll's Ky. Stats., 1922, sec. 1565b3; Wisconsin, Stats., 1917, c. 12, sec. 12; California, Stats. and Amdts., 1905, p. 643.

Several state legislatures have enacted statutes making it illegal for anyone to pay the naturalization fees of another in order to influence his vote.[40]

Until comparatively recent years payment for the conveyance of voters to the polls was considered an entirely legitimate campaign expense. But the feeling has gradually developed that this is really an indirect method of bribing. If conveyance is provided, undoubtedly many persons vote who otherwise would not, and certainly they feel under an obligation to vote for the candidate or party who has supplied the conveyance. In addition, payment to the furnishers of the conveyances has often times been only a thinly concealed payment for their votes. Thirteen states have taken the view that payment for conveyance of voters to the polls is bribery and accordingly have prohibited it by statute.[41] While there is no case on record in which such a statute has been construed as a prohibition of the payment of railroad fare for voters temporarily away from their voting places for the purpose of bringing them home to vote, yet it seems evident that such payment comes under the head of payment for conveyance of voters to the poll, and would therefore be illegal in these thirteen states. While in the other thirty-five states payment of the voter's railroad fare appears to be legal, there can be little doubt that this payment in many cases is closely akin to bribery. With the enactment of absent-voting laws, abuses of this nature have been materially lessened.

[40] Indiana, Acts, 1911, c. 283; Massachusetts, Acts 1913, c. 835, sec. 357; New Jersey, Comp. Stats., p. 3691; Nebraska, Comp. Stats., 1922, sec. 2319; Pennsylvania, Stats., sec. 482.

[41] Table 1, Column 5.

Similar to the last type of prohibition are the statutes limiting the number of challengers and watchers that parties may have at the polls. In Illinois, for example, each party may have only two watchers or challengers at each polling place,[42] while in Pennsylvania each party is permitted to appoint three watchers at the final election, and each candidate two at the primaries.[43] Possibly the chief reason for the limitation on the number of watchers is the desire to cut down on the number of active party workers at the polls, but, in addition, the legislatures have also felt that paying a man to be a watcher is only another way of buying his vote. At the Pennsylvania primary of 1926 the futility of attempting to limit the number of paid election workers was demonstrated. Two factions, the Vare-Beidleman and the Pepper-Fisher, were fighting for control of the Republican party in the state. Each candidate was legally entitled to two watchers at each polling place. It was possible for each faction, therefore, to have twice as many watchers at each polling place as the number of candidates it was supporting. A representative of the Pepper-Fisher faction testified before the Reed Committee that his group had more than 17,000 paid watchers in Pittsburgh alone on the day of the primary.[44] A representative of the Vare group estimated that he had about 6,000 in Pittsburgh.[45] Other estimates placed the total number of paid watchers of the

[42] Act of May 13, 1905.
[43] Sec. 9531, Pa. Stat. Law, 1920.
[44] Hearings before the Reed Committee pursuant to Sen. Res. 195, 69th. Cong., 1st Sess. p. 327.
[45] Ibid., p. 313.

two factions in Pittsburgh at 50,000.[46] The use of watchers was just as prevalent in Philadelphia.[47]

With a limitation on the number of paid watchers futile, there is only one way of preventing the hiring of a vast number of voters on election day. England refuses the right to vote to paid election workers. This is probably the only effective remedy for this abuse, but such a remedy would possibly be unconstitutional in the United States, even if it could be enacted into law.

Much complaint is heard from candidates that as soon as they announce their intention to run for office they are overwhelmed with requests for contributions for religious, charitable and miscellaneous purposes. Many of these requests are only thinly veiled requests for bribe money. Governor O'Neal of Alabama made a very interesting statement concerning this abuse at the conference of governors in 1913. He said:

> When I was a candidate for governor, I was confronted with the proposition that almost every church in the State needed a coat of paint, and invitations came for donations, with a reminder that my failure to comply with their modest request might secure the opposition of that community. Also it suddenly occurred that every county newspaper in the state advised me that they intended to issue a special edition in which they would discuss the various candidates, with the polite intimation that if I failed to contribute fifty dollars, I would be *persona non grata* with the editor. . . . I found that I had a great many warm friends who were doing more for me than any other person in the State, who needed either twenty-five or fifty dollars, as a donation or a loan.[48]

Sixteen states have recognized the evils existing under such a system and have prohibited all solicitations

[46] Ibid., p. 141.
[47] Ibid., p. 305, 485.
[48] *Proceedings, Conference of Governors*, 1913, p. 193.

of contributions from candidates for religious or charitable purposes. The prohibition extends to the candidate's making such contributions, except that he is usually permitted to continue making contributions to organizations and charities to which he had contributed prior to his candidacy.[49]

This summary of the state laws against the direct purchase of votes and political influence shows that the states have made earnest efforts to prevent this abuse and that the courts have upheld most legislative action having this end in view. The courts, however, have had some exceedingly difficult decisions to make concerning what constitutes bribery.

A long series of cases has arisen over the question of the legality of candidates promising, if elected, to serve for less salary than the law attaches to the office. An instance of this appeared in Massachusetts as early as 1810. At that time each town was required to pay the expenses of its own representatives in the general assembly. Gloucester was entitled to six members, but for economical considerations it had been in the habit of sending only two. In 1810 it was thought best to send a full delegation, and to induce the town to do this, certain citizens gave a bond guaranteeing that the expense to the town of the full delegation should not exceed that of the pay of two representatives. Although the members elected had no agency in procuring this agreement, yet the general assembly declared the election void.[50] In New England during the early part of the nineteenth century it was the custom that the posi-

[49] Table 1, Column 6.
[50] Cushing, Story and Joslyn, *Reports of Controverted Election Cases*, p. 97.

tion of town collector should be put up at auction. The person offering to take the position for the lowest compensation secured it. On one occasion the bidding was so keen that an aspirant for the position agreed to give one and a half mugs of toddy for the privilege of collecting.[51] This was carrying the bidding for office too far, and the court said:

> The direct tendency of such a practice is to introduce unsuitable persons into public employment . . . to induce the electors to give their suffrage to him who will work cheapest, instead of him who is best qualified. . . . Not only putting the office at auction is improper, but an election, under such circumstances, when properly drawn in question, must be held to be illegal.[52]

More recent manifestations of the same abuse have been candidates agreeing to refund part of the salary of the office to the public treasury. In numerous decisions this has been held to be an unlawful practice. Carothers *v.* Russell[53] is probably the leading case dealing with this question. In this case it was said:

> It is true an offer to pay money into the public treasury is not in one sense an offer to pay money to an elector, the money in the treasury being public, and not individual, property. But nearly all electors are tax payers, and an offer to pay money into the public treasury, with the intent by such offer to influence the electors to elect the person making such offer, has all the effects of the offer of a bribe. . . . If the offer like the one in question, when acted upon by a voter, becomes to him a bribe, it is, when not acted upon, the offer of a bribe; and under our statute the offering of a bribe by a candidate disqualifies him for the office.

[51] Tucker *v.* Aiken, 7 N. H. 113, 1834.
[52] Ibid., p. 115.
[53] 53 Iowa 346, 1880.

In a similar case it was held that

> It is but little less reprehensible that, for the purpose of inducing election, he should promise to refund to the community as a whole a portion of the salary he should receive from the county than to offer to contribute to the taxpayers individually their *pro tanto* proportion of the amount of salary forgiven.[54]

It was left for California to produce a candidate for one of the judgeships of the superior court of Shasta County, who promised if he was elected he would not qualify for the office and would thus save the entire salary of the office to the tax payers. He secured the majority of the votes, and his opponent brought action against him. The court held that this was not only securing votes by the offer of a valuable consideration, but was also the destruction of an office created by law, and on each ground was clearly an illegal action.[55]

Another series of cases which on first sight seem exactly analogous to the above cases have been generally decided in a contrary manner. Is it permissible for a town in its attempt to become county seat to offer free buildings and other facilities to the county if the election is favorable to that town? In many cases the courts have held that this is not an illegal inducement to the voters unless there is a specific statute prohibiting such action. Judge Brewer of the Kansas Supreme Court, afterwards a member of the United States Supreme Court, has well laid down the differences that jurists see in these two lines of cases. Judge Brewer said:

[54] Prentiss *v.* Dittmer, 93 Ohio St. 314, 1916; also State *v.* Purdy, 36 Wis. 213, 1874; Dawson *v.* Bell, 169 Ind. 61, 1907; Oregon *v.* Church, 5 Ore. 375, 1875; Diehl *v.* Totten, 32 N. D. 131, 1915; Kundert *v.* City of Madison, 39 S. D. 43, 1917.

[55] Bush *v.* Head, 154 Cal. 277, 1908.

When a candidate gives an elector personally money or property, there is a direct attempt to influence his vote by pecuniary considerations. The expectation is that such vote will be controlled, not by the elector's judgment of the fitness of the candidate for the office, but by the pecuniary benefit he has received. . . . That which is wrong when done directly is equally wrong when done indirectly. Salaries are paid by taxation, and when a candidate offers to take less than the stated salary, he offers to reduce *pro tanto* the amount of taxes which each individual must pay. If the candidate went to each elector and offered to pay one dollar of his taxes, that clearly would be direct bribery; and when he offers to take such a salary as will reduce the tax on each taxpayer one dollar, he is indirectly making the same offer of pecuniary gain to the voter. . . . A further question may arise when the offer of the candidate carries with it no pecuniary gain to the voter. As for instance, should a candidate for a county office offer to give, if elected, a portion of his salary for the erection of a public fountain; or, if a candidate for a state office should offer, if elected, to endow a chair in some college. Here it may be said that the voter is in no way influenced by considerations of personal gain. . . . This presents a case going still beyond those which have been decided, and yet very probably the same decision should control and for this reason; wrong considerations are thrown into the scale to influence the vote of the elector. . . . Do these considerations apply to the case at bar? We think not, and for these reasons; there is no question of moral character and personal fitness involved; the question is really and solely one of convenience and material advantages. . . . If of two towns, candidates for the county seat, the one has good roads, bridges, etc. . . . and the other has not, every voter in casting his ballot considers, and has a right to consider and be influenced by, such material and superior advantages; and if neither is so fortunate in this respect, and the citizens of either proffer to furnish such conveniences, such proffer presents a consideration which may fairly be weighed by the voter. . . . As it is no offense against morals or public policy for the citizens of a place to proffer material inducements for the location of a railroad,

neither is it for them to offer inducements for the location of a county seat.[56]

There is seldom, if ever, an election held in which the candidates do not appeal to some material interest to gain votes. It may be that a candidate for Congress will point out that he has been especially skillful in securing new post offices for his district, or has secured large appropriations for the local rivers and harbors. Many congressmen have probably based their appeal for the soldier vote on the grounds of their support of the bonus. How far are such appeals based on the pecuniary aid received by the voters legitimate? When are they in effect simply a cunning form of bribery?

This question arose in regard to the giving of employment to persons in the United States navy yard at Boston for the purpose of inducing them to vote for a certain candidate for reëlection. It was held that the votes of persons so employed, and accepting the employment with knowledge of what was expected of them, should not be counted.[57] The Michigan Supreme Court was called on to decide a somewhat similar case. During the campaign for the issue of bonds to build a new county building in Wayne County, the following notice was widely published: "Attention, voters! Don't forget to vote 'yes' for a new county building. It will distribute one million dollars among the working men of Detroit, and give employment to a great many men." The bond issue was carried. The election was contested,

[56] State *v.* Elting, 29 Kans. 397, 1883; also Exchange Nat'l. Bank of Fitzgerald *v.* Henderson, 139 Ga. 260, 1912; Douglas *v.* Com. Baker Co., 23 Fla. 419, 1887; Dishon *v.* Smith, 10 Iowa 212, 1859. For cases upholding state laws forbidding towns to offer such inducements, see Grove *v.* Haskell 24 Okl. 707, 1909; Tecumseh *v.* Shawnee, 33 Okl. 494, 1912.

[57] Abbott *v.* Frost, 2 Bart. 594.

and the court was called on to decide if the electorate had not been influenced by the offer of a bribe. The court said:

> Electors have not yet arisen to that high state of morals that they will consider the public good and necessity alone. In all elections, electors are appealed to, both on the hustings and in the press, to vote for measures which will conduce to their own private interests. The laborer desiring work had the same right to vote for this proposition because he thought, or was told, that he would obtain work, as the property owners near any proposed site would have to vote for it because they believed the improvement would enhance the value of their property. . . . If the principle insisted upon is correct, there is probably not a single county building . . . which could not have been enjoined on the ground of corruption of voters.[58]

And the court might have gone further and said that under this principle there has possibly never been an election which could not have been set aside. If the chief issue in the election is the tariff, free silver, lower income taxes, or what not, in each case appeal is made to the material interest of at least certain sections of the electorate.

While the Boston Navy Yard and Michigan cases were similar in the respect that in both cases employment was the inducement made to gain the votes of workers, yet the points of dissimilarity were sufficient to justify the opposite opinions of the two courts. In the Navy Yard case employment was actually given to particular workers to influence their votes, making this a clear case of bribery. In the Michigan case there was merely the statement that a group of workers would be benefited if the bond issue was voted. No offer of employment was made to any individual worker, and the

[58] Supervisors *v.* Wayne Circuit Judges, 106 Mich. 166, 1895.

court was correct in holding that the advertisement in this case could not be deemed an offer of a bribe.

Legal authorities find little difficulty in drafting a definition of bribery. A common definition is "The offering or giving of a valuable consideration to a voter, either in payment for his voting as is desired, or for his forbearance from voting at all."[59] To this it is added that the offer must be made with reference to the election and with the intention of influencing the voter's choice. The trouble, however, only begins with the formulation of the definition. It has been seen that the courts have enforced the laws against bribery very rigorously when evidence was presented that any sort of material consideration had been offered to the individual voter for the purpose of influencing his vote. This consideration might be money, payment of taxes, or promise of appointment—all have been held equally illegal. Bribery in these cases has been clear cut. The shades and degrees in bribery begin to appear when the material consideration offered does not apply to one individual as such, but to the great mass of voters. The distinction drawn in the cases Carothers *v.* Russell[60] and Supervisors *v.* Wayne County Judges[61] is a very interesting one. In the first case it was held illegal for a candidate to promise if elected to remit part of his salary to the public treasury. In the second case an appeal for votes for a new county building that stated that the voters would be benefited by the increased employment was held legal. This distinction can probably be made: in the first case, since nearly every individual

[59] *Amer. and Eng. Enc. of Law,* 10, 783.
[60] See p. 28.
[61] See pp. 31-32.

pays some tax, the offer of the candidate was an indirect offer of material consideration to almost every voter; in the second case, all the voters were not directly concerned, for all the voters were not workmen, and even all workmen could not feel so sure of a better job on the new building for this to be as direct an offer of material consideration as in the case of Carothers *v.* Russell. It is more difficult to see any line of distinction between the offer of the candidate to remit part of his salary and that of the contender for the county seat to furnish buildings and bridges. In Judge Brewer's decision the distinction was based on the difference between persons and things. In the case of the county seat there was no moral character or personal fitness involved. Claims of rival towns are material, and if these material considerations enter into the appeal for votes, it is not bribery.

It will be noticed that at no time have the courts been called on to decide concerning the legality of the philanthropic work of the machines. There is no doubt that this is carried on to influence votes, but it is practically impossible to bring an indictment against the boss for sending a load of coal to one of his constituents, or for giving a clam-chowder party to his district, a year before the election. All of this is surely material consideration to influence votes, but it is impossible to believe that any anti-bribery laws will ever prevent it.

It is not easy to answer the question: What is bribery? The legal distinction between what is and what is not bribery appears to be based on intention and on whether or not the offer or gift has been made to the individual voter—that is, in a particular case the court

must decide whether something of value was offered or given with the intention of influencing the vote of the individual elector by means of this offer or gift? Both the elements of intention and of offer or gift to the individual voter must be present. While the courts are undoubtedly correct in holding that both these elements must be present to furnish proof of bribery, yet it is apparent that it is difficult to prove these in many cases where votes are actually influenced by means of some valuable consideration.

The impression therefore exists that despite all the earnest attempts of the state authorities to stamp out bribery at elections it still continues on a large scale. Newspapers and magazines of the past two decades have carried numerous accounts of elections won by bribery. How many of these accounts are reliable, it is impossible to say. The whole matter of bribery is so intangible, so well hidden from view, that regardless of the stringency of the statutes against it, or of the efforts of honest public officials to prevent it, some purchase and sale of votes will probably always take place.

The more recent tendency is to attempt the prevention of bribery by limiting the amount of money that may be spent in a campaign, and by requiring candidates and party committees to file statements with some public official showing who were the contributors to the campaign fund, and showing for what and to whom these funds were paid out. This class of legislation will be considered in a later chapter.

CHAPTER II

INTIMIDATION

A CAREFUL survey of the literature dealing with election abuses leads to the opinion that the use of open violence to prevent a voter from casting his ballot as he wishes, or to prevent him from voting at all, is gradually becoming less prevalent. While it is true that occasionally gangs of bullies still interfere with voters, watchers, or challengers, these instances are becoming more and more rare. The political machines of today realize that this is too crude a method to use in carrying elections, for the employment of open force more than any other machine tactics is likely to cause a revolt of the electorate.

There is plenty of evidence, however, to show that many of the elections during our history have been greatly influenced by physical coercion. In numerous investigations connected with contested elections of members of the United States Congress this is forcibly brought out. In 1860 a committee of the House of Representatives investigating the election contest of Harrison *v.* Davis from Maryland received a memorial from a group of Baltimore citizens which said in part:

> Under the direction of judges of elections appointed for the purpose and lending themselves to its consummation, the polls in the different wards were held in localities near which muskets and rifles had previously been deposited in large quantities with the knowledge of the police, to supply the means of intimidation and murder. At a large majority of the polls the arms so provided were publicly and aggressively produced, and at some of them unscrupulously used. . . . In the central ward of the city, within fifty yards of the mayor's office,

and in full view of the office of the marshal of police and the central police station, the polls were violently seized upon almost immediately after they were opened by a band of armed and desperate men. The peaceful citizens who had assembled there were driven away under a volley from rifles and pistols, and the forcible possessions thus acquired was maintained until the ballot-box was removed in the evening.[1]

During the Reconstruction Period Congress made a large number of investigations concerning the intimidation of negroes at elections in the Southern States. Clear evidence was presented that such intimidation was taking place on a very large scale. In these investigations those accused of intimidating the negroes retorted with the counter-charge that they themselves were being intimidated by federal troops at the polling places.[2]

There is much well authenticated evidence in Myers' *History of Tammany Hall,* showing that in many of the earlier elections in New York City open violence was used by the opposing parties or factions. In describing a riot at the election of 1834, he says: "A row began in the 'bloody old Sixth' by the breaking of some ballot-boxes. Both parties armed with stones and bludgeons, and turned the scene into one of violence."[3] Concerning the election of 1852 Myers says: "Fraud and violence occurred at nearly every voting place. In some

[1] House of Representatives, Misc. Doc. no. 4, 36th. Cong., 1st. Sess., p. 92, 1860. For charges similar in nature, see *Contested Election* of *Barrett v. Blair,* Missouri. House Misc. Doc. no. 8, 36th. Cong., 1st Sess. 1860; *Contested Election of Cessra v. Myers,* Pennsylvania, House Misc. Doc. no. 2, 42nd. Cong., 1st. Sess. 1871.

[2] *Senate Report on Louisiana Elections,* 44th. Cong., 2nd. Sess. 1877; *Senate Report* on *Mississippi Elections,* Ibid.; *Contested Elections from South Carolina,* House Misc. Doc. no. 7, 45th. Cong., 1st. Sess. 1877; *Contested Election, McKenzie v. Braxton,* House Misc. Doc. no. 15, 42nd. Cong., 1st. Sess. 1871; *Contested Election, Giddings v. Clark,* House Misc. Doc. no 155, 42nd. Cong., 2nd Sess. 1872.

[3] Gustavus Myers, *History of Tammany Hall,* p. 92.

instances one faction took possession of the polls and prevented the others from voting; in others both factions had control by turns, and fighting was desperate."[4]

While accounts of violence at elections comparable to the above during the past decade or two are rare, yet they are sometimes found. The Philadelphia primary of September 19, 1917 offers excellent proof that machines will still resort to force to secure the election of their candidates. At this primary several of the anti-machine candidates were assaulted and a policeman was killed by gangsters brought in from other cities.[5] Mayor Smith was indicted for complicity in this election murder, and evidence was given that Congressman W. S. Vare and State Senator E. H. Vare furnished the money paid the gangsters.[6] No conviction, however, of Mayor Smith or of the Vares was secured. More recently, evidence was obtained by the Reed Committee that in Philadelphia on primary day, 1926, there was fighting and shooting at the places where the vote was being taken and that election workers opposed to the Vare organization were thrown out of the polling places.[7] Evidence was given before the same Committee that thugs and gunmen were active in Chicago on the day of the Senatorial primary of 1926.[8]

All acts of violence to affect elections have been illegal throughout the history of the United States, for even before the enactments of statutes against them, such acts were considered crimes at common law. The

[4] Ibid., p. 158. See p. 73 and 180 for accounts of violence at other elections. Cf. J. I. Davenport, *The Election and Naturalization Frauds in New York City, 1860-70.*

[5] *New York Times,* Sept. 20, 1917.

[6] Ibid., Oct. 3, 1917.

[7] Hearings Before the Reed Committee, op. cit., p. 885.

[8] Ibid., pp. 1621-3.

reason for this is discussed in a decision of the Massachusetts Supreme Judicial Court in 1820. The defendant in the case had tried to stop a town meeting election by seizing the ballot-box. The court said:

> Do the facts charged amount to an offense at the common law? On this question we entertain no doubts. Here was a violent and rude disturbance of the citizens lawfully assembled in town meeting, and in the actual exercise of their municipal rights and duties. The tendency of the defendant's conduct was to a breach of the peace, and to the prevention of elections, necessary to the orderly government of the town. . . . It is true that the common law knows nothing perfectly agreeing with our municipal assemblies. But other meetings are well known and often held in England, and disturbance of which is punishable at common law as a misdemeanor. In this commonwealth, town meetings are recognized in our constitution and laws; and the elections made and the business transacted by the citizens at those meetings, lie at the foundation of our whole civil polity.[9]

The people of the various states, however, have not been content merely with the common law prohibitions against the use of force at elections. As has been shown in the preceding chapter a number of the state constitutions have directed that the legislative bodies of those states should support "the privilege of free suffrage by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper conduct."[10] The constitutions of other states simply provided that the legislature should pass laws "to secure the purity of elections and guard against abuses of the elective fran-

[9] Commonwealth *v.* Hoxey, 16 Mass. 385, 1820; also J. P. Bishop *Criminal Law*, vol. 1, par. 922.

[10] See chapter 1, page 10.

chise."[11] In addition, early constitutions of Georgia,[12] Kentucky,[13] and Nebraska,[14] provided that before any one should assume an office he must take oath that he has made no threat to gain support for his election. Constitutions of Indiana[15] and Oregon[16] provided that any person making threats in order to secure votes should be disqualified to hold office in case of his election.

In carrying out these constitutional provisions, each of the forty-eight states now has on its statute books general provisions prohibiting the intimidation of voters.[17] While these provisions are similar in idea, they differ in the degree in which they define what constitutes an act of intimidation. In great detail, the Arkansas statute provides that no vote shall be influenced by threat or warning of personal injury or violence, or of ejectment from rented premises, foreclosure of mortgage, action at law, discharge from employment, or expulsion from church, lodge, or secret order.[18] Idaho has an added provision that an attempt to influence votes by a threat to collect a debt or by withdrawal of trade shall be considered intimidation.[19] In Michigan the use of undue influence by a priest or pastor in regard to his parishioners is penalized.[20] In more general terms, the legislature of Nevada has declared it a corrupt practice to threaten directly or indirectly any temporal or spiritual injury for the purpose of influencing political action.[21]

[11] Ibid., page 12.
[12] Cons., 1789, art. 1, sec. 15.
[13] Cons., 1792, art. 1.
[14] Cons., 1875, art. 14, sec. 1.
[15] Cons., 1816, art. 11, sec. 5.
[16] Cons., 1857, art. 2, sec. 7.
[17] See Table 2, Column 1.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.

Those states which have adopted the more complete form of the Australian ballot system have provisions that only recognized officials shall remain within the place of voting, and that no electioneering shall take place within certain specified distances from the polls.[22] These provisions are of vast benefit to the voter. He cannot be so easily coerced by party workers who are fifty or a hundred feet from the polls, and in the secrecy of the voting booth he may cast his ballot free from any outside influence.

The best general statement of what the courts consider an unlawful use of force or coercion to influence elections is found in the case of United States *v.* Souders.[23] In a New Jersey election certain electors were prevented from voting by physical violence. The court said:

> His (the voter's) will must be uncontrolled, and his physical opportunity for doing the act must not be interfered with. Any control over the one, or interference with the other, encroaches upon his freedom of action, and produces the mischief which the words of the statute were designed to guard against and cure. And what is it to prevent a voter from exercising this right? It is to put such a restraint upon his volition, or his body, that he cannot perform the act; producing, by threats or otherwise, such apprehension of personal loss or injury, as to induce him not to vote, or to vote contrary to his wishes, being a restraint upon his will; and intervening between him and the ballot-box so as to render it physically impossible for him to cast his vote, being the restraint upon his body.

The importance of the attitude of the police toward violence at elections is very apparent. If the political

[22] E. C. Evans, *History of the Australian Ballot System in the United States*, p. 35.
[23] 27 Federal Cases no. 16, 358, 1871.

gangsters can be sure that the police will remain passive during election disturbances, naturally they will feel free to carry on their acts of coercion. If, in addition, the police force is active in working for the success of a particular group of candidates, there is scarcely any limit to the intimidation which may be effected through illegal arrests or bullying of the voters. This was recognized as far back as the colonial period, and several of the colonies placed a check on election-day arrests. In Virginia, for example, no arrests were permitted on election days except for felony and breach of the peace. In South Carolina an elector was exempt from the serving of writs or processes during his journey to and from the polls, or during his stay there for the purpose of voting.[24] The Connecticut Constitution of 1818 provided that at all elections of officers of the state, or members of the general assembly, the electors would be privileged from arrest on any civil process during their attendance upon and going to and from the elections.[25] It is provided in the Alabama Constitution that "Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest, during their attendance at elections, or while going to or returning therefrom."[26] Most of the other state constitutions contain provisions similar to that of Alabama.[27] This provision of the Connecticut Constitution was upheld in the case of Swift *v.* Chamberlain,[28] and provisions similar to that of Alabama were declared

[24] C. F. Bishop, *History of Elections in the American Colonies,* p. 190.
[25] Art. 6, sec. 4.
[26] Cons., 1875, art. 8, sec. 4.
[27] E. H. Paine, *A Treatise on the Law of Elections,* p. 538.
[28] 3 Conn. 537, 1821.

valid in the cases Thomas *v.* Henderson,[29] and in the Matter of Election Officers.[30]

In cases arising where the use of any sort of coercion or force by the police has been shown, the courts have not hesitated to denounce such activities as being repugnant to a popular form of government. One of the best expressions of this denunciation was made by the New York Supreme Court for King's County in the case of People *v.* Hochstim.[31] A voter had been arrested without warrant while he was approaching the polls to vote. The court said:

> I am of opinion that Bassett (the voter) could not have been legally arrested even with a warrant while voting or offering to vote. . . . The citizen in voting is performing an act of sovereignty. He is participating in the free expression of the sovereign will of the people. If the government may send officers to the polls with or without warrants to prevent citizens from voting by arresting them and taking them away. . . then the freedom of elections may be destroyed. . . . If voters could be arrested while voting or offering their votes, intimidation could be spread like an epidemic, and the timid, the friendless, and the weak easily prevented by fear from coming to the polls.[32]

At the Louisville city election in 1905, the activity of the police in attempting to carry the election for the city administration then in power by all sorts of intimidation and violence was notorious. The election was contested in the state supreme court, and the court held the election void. The court said:

[29] 125 La. 291, 1910.
[30] 1 Brewster (Pa.) 182, 1868.
[31] 73 N. Y. Supp. 626, 1901.
[32] Cf. People *v.* Doe, 96 N. Y. S. 391, 1905; U. S. *v.* Small, 38 Fed. Rep. 103, 1889.

The conduct of an election under the supervision of either military or police authority has never been sanctioned by our courts, nor approved by our people. . . . In our opinion, it is more objectionable to have the polling places dominated and controlled by a partisan police than it would be to have the militia mobilized in a city in which an election is being conducted.[33]

Jealousy of the extension of military authority is a characteristic of the people of the United States, and in some of the states there are statutes prohibiting the employment of troops or their presence at any place of election.[34] Probably because of this very keen opposition to activity by the military forces few cases have arisen concerning this type of intimidation at elections. An alleged case of such intimidation arose, however, as early as 1792. At a Congressional election of that year troops under the command of a brother of one of the candidates paraded around the election place, and some of the soldiers threatened to beat any person voting for the opposing candidate. An investigation was made by a committee of the House of Representatives who reported that this conduct was inconsistent with the freedom and fairness which ought to prevail at elections. The House, however, voted that there was not enough evidence to overthrow the election.[35] Most of the other cases of alleged military intimidation occurred in the Southern States during the troubled Reconstruction Period, and evidence concerning this was brought out in the Congressional investigations to which reference has previously been made.[36]

[33] Scholl *v.* Bell, 125 Ky. 750, 1907.
[34] G. W. McCrary, *The American Law of Elections*, p. 358.
[35] McCrary, Ibid., p. 358.
[36] See chapter 2, p. 37.

To free elections from any possibility or suspicion of control by the military forces, some of the states have declared it illegal for the state militia to be called out for exercise or drill on the day of election.[37] Such a law was upheld by the New York Supreme Court of Judicature in the case of Hyde *v.* Melvin.[38] The court, in rendering its decision merely declared the law valid, but in his plea before the court one of the attorneys in the case gave the reasons, as he saw them, for this statute. He said: "The object of the provisions of the militia law was to prevent the electors from being overawed or influenced by military force or power; or the corruption, by means of military authority, of such soldiers as are electors."

McCrary's *Law of Elections,* in summing up the legal principles applicable to the presence of armed forces at elections, says:

> Although the fact that an armed force was stationed at or near the polls will not of itself vitiate an election in the absence of proof that it did in fact deter from voting a portion of the electors sufficiently large to change or render doubtful the result, yet, in such a case, it would not be necessary to show that the electors who declined to vote would have been in actual danger if they had attempted to do so. If it be made to appear that there was an armed force at the polls, and that a number of votes sufficiently numerous to affect the result, or render it doubtful, considered the presence of such force so menacing to them as to render it unsafe for them to vote, and that they had reasonable cause so to think, and if for this reason they declined to go to the polls, the election ought to be set aside.[39]

[37] McCrary, p. 369.
[38] 11 Johns., N. Y. 521, 1814.
[39] McCrary, p. 355.

It has been shown that there seems to be sufficient evidence for the statement that the use of physical violence to affect the results of elections has become less prevalent. But there is apparently little decrease in the more subtle sort of intimidation, such as the use of economic, social, racial, or religious pressure. This sort of intimidation is, of course, more difficult to deal with than is open violence, for it may be kept under cover, and may take place long before the day of election.

The general provisions of the state laws prohibiting intimidation of voters usually apply to the non-physical as well as physical acts of coercion,[40] and the courts have shown that they will declare other than physical forms of intimidation illegal. This attitude of the courts is best brought out in DeWalt *v.* Bartley,[41] in which case a statute providing for the secret ballot was declared valid. The court said:

> An election may be held in strict accordance with every legal requirement as to forms, yet if, in point of fact, the voter casts the ballot as the result of intimidation; if he is deterred from the exercise of his free will by means of any influence whatever, although there may be neither violence nor physical coercion,—it is not a free and equal election within the spirit of the constitution.

The belief is widely held that the greatest part of this non-physical intimidation arises from the attempts of employers to control the votes of their employees, and there is much evidence to show that employers have attempted this control by threats of discharge or lower wages. In a Congressional investigation of the

[40] See chapter 2, p. 40.
[41] 146 Pa. 529, 1892. Cf. U. S. *v.* Crosby, 25 Fed. Cas. no. 14, 893, 1871.

election of 1876 in Massachusetts and Rhode Island much evidence of this nature was presented.[42] The following description of conditions in a factory town was given:

> The operative lives in a tenement belonging to the manufacturer; his wages are small; his wife and children probably work in the mill; and if he is in any way fractious, or opposed to voting in the way these people (his employers) dictate, his wife, children, and himself are turned out of the mill, out of the tenements, and out of the means of earning a livelihood.[43]

Testimony was presented that at certain polling-places company officials were in charge of the ballot-box. Workmen were provided with Republican tickets at the factory, hauled in wagons to the polling places, and voted under the direct supervision of these company officials.[44] Evidence was given that at one of the wards of Providence the time-keeper employed by the Corliss Engine Company was at the polls with his book, and as every man working for his company cast his ballot, the time-keeper checked his name or wrote it down on the book.[45] The majority of the investigating committee reported to the Senate that

> Improper practices exist in the States visited, and the freedom of choice by the voters in those states has been interfered with, and persons practically threatened with dismissal from employment if they voted in opposition to the wishes of their employers.[46]

[42] Sen. Rep. no. 497, 46th. Cong., 2nd. Sess., passim, 1880.
[43] Ibid., p. 3.
[44] Ibid., p. 4.
[45] Ibid., p. 10.
[46] Ibid. For further accounts of intimidation by employers, see E. C. Evans, *A History of the Australian Ballot System in the United States*, pp. 12-13, and H. J. Peterson, *Corrupt Practices Legislation in Iowa*, p. 61.

Among the many other types of election abuses that appear to have been present at the Republican primary of 1926 in Pennsylvania, attempted intimidation of public employees was also reported. Mayor Kline of Pittsburgh is alleged to have stated in a public address that "No city employee who fails to support the Pepper-Fisher ticket of the Mellon organization at the primary election will keep his job five minutes."[47]

It is very probable that the courts would hold that coercion of employees is unlawful under the general statutory provisions against intimidation, but twenty-seven states have enacted laws making this a specific offense.[48] These laws differ merely in detail, and only a few will be described to present their general nature. Wisconsin provides that no employer shall attempt to influence his employees by threats of discharge, lack of employment, or lower wages.[49] A provision common to several states is that employers must not attempt to influence employees by anything printed on pay envelopes, or by posting placards setting forth that the election or defeat of any candidate or principle will cause more work or better pay. Colorado makes it illegal to promote employees to influence votes.[50]

Although the states have earnestly attempted to prevent elections being controlled by employers, the rise of large corporations has made such prevention much more difficult. In some parts of the country all of the voters in certain precincts are working for the same firm, and even, at times, the majority of the electors in a whole county or in several contiguous counties are directly or

[47] Report of Reed Committee, op. cit., p. 639.
[48] See Table 2, Column 2.
[49] Ibid.
[50] Ibid.

indirectly connected with the same concern. One of the most striking recent examples of the control of an election by large industrial corporations appeared in Colorado during the mining difficulties of 1914. In one of the counties the board of commissioners fixed the voting places within the holdings of the coal companies. During the campaign these companies prohibited the entrance of the Democratic candidates into their camps to speak to the employees of the company, and on election day permitted only their operatives to vote. Outsiders were not even allowed to enter the companies' premises to be present at the election. The companies maintained that their policy was due to industrial necessity. Naturally, the Republican candidates secured the majority of votes. The Democrats then contested the election in the state courts. The state supreme court was outspoken in its condemnation of such procedure. It said:

> The plain purpose of the formation of the new precincts was that the coal companies might have opportunity to conduct and control the elections therein, just as such elections were conducted. The inevitable conclusion is that these closed precincts were so formed by the county commissioners with the connivance of the representatives of the coal companies, if not by their express command. . . . When these corporations elected to have their camps made election precincts, they of necessity abandoned whatever private or exclusive control to which they may have been entitled as such to the extent that such territory became so dedicated to the public use for election purposes, and entitled to the same due regard for the lawful rights of all interested citizens as in all other election precincts. Thus the so-called industrial necessity was subordinated to the public use, and cannot serve as justification or excuse for the private conduct of public elections, nor for such inexcusable restrictions upon the rights of citizenship. The law will not distinguish between a free and open election

in any one of these so-called closed precincts and any other election precinct in the state. If the conduct of an election such as appears here shall meet the approval of the courts, then it must be justifiable in every election precinct and at every election. Such a situation is so repugnant to the spirit of free government as to appear inconceivable. Its certain result will be the destruction of popular government. There can be no free, open, and fair election as contemplated by the Constitution where private industrial corporations so throttle public opinion, deny the free exercise of choice by sovereign electors, dictate and control all election officers, prohibit public discussion of public questions, and imperially command what citizens may and what citizens may not, peacefully and for lawful purposes, enter upon election or public territory. . . . It is sufficient to cause every liberty loving American citizen to shudder in contemplation of the possibility that the private "industrial necessity" of some industrial company or corporation, employing large numbers of men may thus determine the policies or the fate of the republic. The election was declared void.[51]

If voters are unable to get away from their work long enough to take part in elections, all laws safeguarding the suffrage are futile so far as many such workers are concerned, for jobs are necessarily more important than voting to many of them. Realizing this, twenty-six states require that employees be granted time in which to vote.[52] The laws differ in the amount of time required to be given. In some states election day is declared a holiday. In most states a leave of absence of from two to four hours is made obligatory. In some of the state laws of the latter type it is also provided that there shall be no deduction of pay because of this leave of absence.[53] The Supreme Court of Illinois has

[51] Neeley *v.* Farr, 61 Colo. 485, 1916.
[52] See Table 2, Column 3.
[53] For example, Illinois and New York, Table 2, Column 3.

recently made a decision concerning the constitutionality of a provision of this kind. It held that the law in so far as it gives employees the right to be absent for two hours on election day for the purpose of voting is valid and binding, but, so far as it provided that the employer shall make no deduction from the employee's wages because of the absence, and penalizes violations of such provision, it abridges the constitutional right to contract, and deprives employers of their money and property without due process of law.[54] Merriam and Gosnell in their *Non-Voting Causes and Methods of Control* say:

> This decision coming as it did just before the mayoralty election, undoubtedly had some effect upon the importance of the factor of fear of loss of wages as a cause of non-voting. The precinct committeemen, the persons of political prominence, and the interviewers all gave this cause considerable weight.[55]

Of the 5,000 people interviewed in the course of their investigation nearly 400 gave fear of loss of business or wages as one reason for not voting.[56] As was to be expected, most of these cases came from the poorer neighborhoods.[57] These writers believe, however, that even if the law had been upheld, it would not have solved the problem. With so many elections each year, the financial burden on individual employers would have been too great. They suggest that elections should be held upon a uniform day, which could be declared a legal holiday, or on Sundays.[58]

[54] People v. C. M. & St. P.R.R. Co., 306 Ill. 486, 1923.
[55] P. 87. (Quoted with the permission of the University of Chicago Press.)
[56] Ibid., p. 88.
[57] Ibid., p. 90.
[58] Ibid., p. 95.

Most of the instances in which voting has been influenced through fear of social ostracism, or of expulsion from a church or club, have occurred among the negro voters. The negroes are especially proud of their membership in any organization, and through such organizations powerful pressure may be brought to bear on the negro voters. At an Arkansas election both threats of physical injury and of social ostracism were made against any negroes not voting the Republican ticket. Evidence of enough coercion to bring the election before the courts was found. The court had to decide if the whole election results should be overruled. Its opinion was that

> There is a distinction between particular illegal votes which may be proven and exactly computed, and which certainly ought to be excluded whenever cast, and the effects of fraudulent combinations, coercion, and intimidation. It can never be precisely estimated how far the latter extend. . . . They cannot be arithmetically computed. . . . Yet it cannot be said that elections are "free and equal" where fraudulent combinations for illegal voting override honest votes, or where fear deters from exercise of free will, although there may be no turbulence. . . . It seems clear that courts must abnegate the power of preserving the freedom of elections, and abandon the polls to the violent and unscrupulous; or, must take the ground that wherever such practices or influences are shown to have prevailed, not slightly and in individual cases, but generally, and to the extent of rendering the result uncertain, the whole poll must be held for naught.[59]

One of the white bosses of Paducah, Kentucky, organized a large part of the negro voters into the United Protective Association. Each member took an oath in blood that in political matters he would obey

[59] Patton *v.* Coates, 41 Ark. 111, 1883; also Jones *v.* Glidewell, 53 Ark. 174, 1890.

the chief. The Kentucky Court of Appeals was called on to decide if an election was valid where these members had cast their votes as the chief directed. The court held that

> An election cannot be free and equal where approximately 30 per cent of the electors are not at liberty to cast their votes according to their own volition and judgment because of coercion growing out of their membership in an unlawful organization wherein they had taken an oath to submit to the political domination of another and cast their votes as he may direct rather than in accordance with their own judgment and conviction.

The election was declared void.[60]

Although, in general, the courts have held that influencing votes through organizations or by fear of social ostracism is unlawful intimidation, yet the North Carolina Supreme Court held that the expulsion of a negro from a church because he voted the Democratic ticket was not illegal.[61]

This study of the judicial attitude toward acts of intimidation designed to influence elections shows that in most cases the courts have evinced a disposition to protect the freedom of elections as far as possible. If it can be clearly shown that any voter has through fear cast his ballot contrary to his wishes, it will be thrown out. But this is not usually the question before the courts. Where intimidation is charged, it is impossible to prove exactly how many votes have been influenced. The question for the court to decide is: Has intimidation been so prevalent that the whole vote should be

[60] Burns *v.* Lackey, 171 Ky. 21, 1916.
[61] State *v.* Rogers, 128 N. C. 576, 1901.

invalidated? The rule for deciding this has been given by several courts. The Kansas Supreme Court said:

If the election board continues to honestly discharge its duty, and a fair opportunity is given to vote, a slight disturbance and casual fray such as frequently occur at elections will not vitiate an election, or justify voters in abandoning the polls. . . . The principal question is, whether the great body of electors had an opportunity to freely cast their ballots.[62]

The North Carolina Supreme Court has held:

Mere noise, confusion and empty threats cannot of themselves destroy the integrity of the election; to have that effect they must at least deter electors of reasonable firmness from voting, or drive them to vote through such fear and intimidation otherwise than as they intended and desired to do, and this ought clearly to appear.[63]

A more general rule is laid down by the Georgia Supreme Court:

Such conduct will not, however, vitiate the election, nor will it have the effect of changing the result, unless it be clearly shown who were the voters thus deterred from voting, and that if they had voted they would have voted on the losing side and that their votes would have changed the result of the election.[64]

The leading general principle established by judicial decisions in this class of cases appears to be that for a court to set aside an election on the ground that a free election was prevented by intimidation, the presence of such intimidation must be clearly proved, and it must be shown beyond a doubt that this coercion so per-

[62] Tarbox *v.* Sughrue, 36 Kans. 225, 1887. Cf. Pradat *v.* Ramsey, 47 Miss. 24, 1872.
[63] Roberts *v.* Calvert, 98 N. C. 580, 1887.
[64] Cole *v.* McLendon, 109 Ga. 183, 1899.

meated the election that the determination of the will of the majority was impossible. McCrary states that

> The true rule is this: The violence or intimidation should be shown to have been sufficient to change the result or that by reason of it the true result cannot be ascertained with certainty from the returns. . . . The question in each case must be, has the great body of electors had the opportunity to express their choice through the medium of the ballot, and according to law, and this question must be decided in the light of all the facts and circumstances shown in the evidence.[65]

The final general principle to be deduced from the various decisions is that this intimidation need not be confined to acts of physical violence. Evidence that a sufficient number of votes has been influenced through coercion of the voter's will by any sort of pressure brought to bear on him will invalidate the election as readily as will evidence of physical violence.

[65] G. W. McCrary, *The American Law of Elections*, p. 354.

CHAPTER III

FRAUD

It is not within the scope of a study of corrupt-practices legislation to describe or even to name all the various sorts of fraudulent practices which at one time or another have been used to influence election results. Only those fraudulent practices concerning which there have been statutory enactments or judicial decisions will be considered. With this limitation in mind, fraudulent practices at elections may be divided into two classes—those committed by the voter, and those committed by election officials. Under the first head come registration and voting by unqualified voters, voting more than once, voting under a fictitious name, impersonating another voter, feigning disability in order to get assistance in marking the ballot, and making distinguishing marks on the ballot. Fraudulent practices committed by election officials include permitting unqualified persons to register or vote, preventing qualified persons from registering or voting, deceiving voters, making a false count of the ballots, and making fraudulent returns of the results of the election.

Although it is impossible to determine to what degree fraud is present in any election, it is probably safe to say that in many cases, especially in city elections, the results are determined by fraudulent practices. In the city, the election officials never know more than a very small percentage of the voters in their districts, and, therefore, it is more difficult for them to prevent fraudulent votes from being cast. The voters do not

know one another, and this gives the officials greater opportunity to manipulate the returns. In the country districts where all the voters live on more intimate terms with one another, fraud is much more difficult to perpetrate.

Many instances of fraud in New York City elections may be taken from Myers' *History of Tammany Hall.* Concerning the election of 1827, he says: "Cart-loads of voters, many of whom had been in the country less than three years, were used as repeaters. An instance was known of one cart-load of six men voting at six different places."[1] He relates that in 1831 "The National Republicans . . . foisted upon the voters a Jackson electoral ticket containing forty-three names, instead of the legal number forty-two, thereby invalidating each of the ballots voted. This trick, it was calculated, lost to Jackson more than a thousand voters."[2] At the mayoralty election of 1843 "Convicts in batches of twenty and thirty were taken from Blackwell's Island to New York, where they were lodged, and the next day given Democratic ballots."[3] At the primary election of 1852, "many ballot boxes, it was alleged, were half filled with votes before the election was opened. Wards containing less than 1,000 legal Democratic voters yielded 2,000 votes."[4] In 1868,

> Tweed personally suggested to the twenty-four leaders the stuffing of the ballot box. . . . By fraudulent naturalization, repeating, the buying and trading of votes, and intimidation, Seymour secured a total of 108,316 votes against 47,762 for Grant. The whole vote of the city was swelled to 156,288, of

[1] P. 73.
[2] P. 90.
[3] P. 135.
[4] Ibid., p. 158.

which, it was conclusively demonstrated, at least 25,000 were fraudulent.[5]

Before the introduction of the Australian ballot system there were many charges of ballot box stuffing. The lack of a uniform, official ballot gave a great opportunity for an elector to deposit more than one ballot. It was particularly easy to do this by the use of the tissue paper ballot, where one or more smaller ballots could be folded inside a large one without an outsider being able to see that there was more than one ballot being cast. In a contested election from South Carolina it was shown to the forty-seventh Congress that there were 36,248 persons who had voted and 42,537 ballots had been found in the ballot boxes.[6] There is evidence, however, to show that the introduction of better balloting systems has not put an end to fraudulent voting. Mr. E. R. Finch makes the statement that

> A careful investigation in widely different parts of the city (New York) following the election of 1908 showed that, even with all the fraudulent votes that had been eliminated, yet in many districts this vote ran from one-eighth to one-quarter of the total registered vote.[7]

Registration under public authority some thirty or sixty days before election is quite generally made a prerequisite for voting. This regulation, if honestly carried out, tends to prevent voting by unqualified voters, repeating, and other fraudulent practices. But it is probably in connection with registration that the most fraudulent schemes have been contrived. For the

[5] Ibid., p. 218. For Myers' account of fraud at other New York elections, see pp. 114, 118, 137, 147, 177, 203, 206, 220, and 275.

[6] E. C. Evans, *A History of the Australian Ballot System in the United States*, p. 13.

[7] "Fight for a Clean Ballot," *Independent*, 68, 1020.

floating voters to be qualified to cast their ballots, their names must be on the registration books, and to accomplish this the machines have resorted to all sorts of dishonest steps. An agreement is often made with boarding house keepers and others to swear, if inquiry is made, that certain persons on the registration list live in their houses. These names are often those of fictitious persons, or of voters who have moved away, or even of dead people. Mr. Finch tells that in the New York City election of 1908, the name of a man whose mother said he had died in 1904 was registered.[8] Seymour and Frary state that

> For months the Boss is busy creating as many lodgings as possible to substantiate the floaters' claims for registration. Janitors in apartment houses, lodging house keepers, even barbers, saloon keepers, and livery men are persuaded to tell inquirers that X, Y, and Z board at their establishments.[9]

In its plan for a model registration system,[10] the Committee on Election Administration of the National Municipal League has made certain important suggestions for improving the registration machinery for the purpose of preventing fraudulent voting. The Committee suggests first that the signature of each person registering should be taken and his signature at the time of voting be checked against the previous signature. In the second place, the Committee thinks the present registration systems do not properly provide for the purging of dead wood from the registration lists. The Committee suggests that this purging can be most

[8] Ibid.
[9] Chas. Seymour, and D. P. Frary, *How the World Votes*, p. 260. Cf. Myers, pp. 192-96.
[10] Supplement to the *National Municipal Review*, vol. 16, Jan. 1927.

effectively carried out by the use of death reports, cancellation of registration for failure to vote, and in large cities, by a house to house canvass of registered voters, or by a check of the census of the adult citizens against the registers. It has also been suggested by another group that the publication of the registration lists be made compulsory, and that a reward of one hundred dollars be offered for proof of fraudulent registration.[11]

The suggestion of checking signature against signature to establish identification implies the presence of a thorough going literacy test for voters. While such a test is desirable, its establishment in some of the states is improbable. Even if the suggestions for purging the registration lists were adopted, proper purging would in the end depend upon the intelligence and honesty of the officials in charge.

The earliest form of voting in the American colonies was by the oral or viva voce method, but soon after the establishment of the United States Government ballots were in general use at elections. Virginia and Missouri, however, did not abandon the viva voce method until the Civil War period, and Kentucky maintained it some years longer. Since there was no possibility of secrecy under this method of voting, it lent itself readily to the use of bribery and intimidation at elections. The buyer of the vote could see that his purchase was being delivered, and those making use of physical, economic, or social intimidation had a perfect check on their victims.

Nor did the introduction of the printed ballot do much to stop the employment of bribery and intimidation.

[11] Outline of an Improved Method for Conducting Elections, prepared by the Committee on Electoral Reform of the National Municipal League. The *National Municipal Review*, 10 (1921), 603.

These ballots were printed by the candidates or party committees. They were usually printed on easily distinguishable paper, and party workers could see how every one was voting. The ballots were distributed by the party workers, and no provision was made for secrecy in marking the ballots. Such a voting system lent itself about as readily to the use of bribery and intimidation as the viva voce method, and it made fraudulent voting easier. Some of the ballots were printed on tissue paper, and it was a comparatively simple matter to fold several together so that they looked like one. Much stuffing of the ballot box took place.

Relief was sought from these abuses by the introduction of the Australian ballot, so-called because it had been first used in Australia. Under this system the ballots are prepared by the designated public official, their genuineness being certified to by endorsements on the reverse side of the ballots. These ballots are distributed with extreme precaution to the local election officials just before the opening of the polls. On presenting himself to cast his ballot, the voter is first checked as to his registration. He is then given an official ballot by the judge of elections. The voter must then immediately take the ballot to a booth curtained off from view, where he marks it and folds it so that no one can see how he has voted. The ballot must then be deposited in the ballot box, and the voter leave the polling place. Only legally designated officials are permitted to remain within certain specified distances of the voting place.

It is readily seen that this system of voting is a vast improvement over earlier systems. The secret ballot

makes it more difficult for elections to be won by the use of bribery and intimidation. Unless there is collusion on the part of election officials, it is impossible to tell how a person has cast his ballot, and even though a voter has accepted a bribe, or he appears to be intimidated, he may vote as he wishes in the secrecy of the voting booth.

The first trial of this system in the United States was at a municipal election in Louisville, Kentucky, in 1888. It soon spread throughout the country until today it is in use in all the states except a few in the South, and in these states that part of the new system which provides that the ballots shall be furnished by public officials has been generally accepted. Furthermore, some of these states have established the full system in a few of their counties. The reason for the hesitancy of the Southern States to adopt the full-fledged Australian Ballot has probably been due to the fear of the Democratic organizations that the number of Republican ballots might increase under the new system, and thus White Supremacy would be endangered.[12]

Certain ways have been devised to defeat the purposes of the Australian ballot. The "Tasmanian dodge" or "endless chain" is the most clever of these. By some method an official ballot is removed from the polling-place and is marked outside. This marked ballot is given to an elector who votes that ticket and brings back the one given him by the ballot clerk. This process is repeated over and over again. It can be prevented by requiring an official endorsement or numbering on each ballot.[13]

[12] For a full discussion of the Australian Ballot, see E. C. Evans, *History of the Australian Ballot in the United States.*

[13] Evans, op. cit., p. 72.

The purposes of the Australian ballot are most often defeated, however, by provisions permitting certain election officials or party representatives to give assistance to voters who declare themselves unable to mark their own ballots. Secrecy is destroyed, and the old opportunity for corruption is opened up again. Mr. C. R. Woodruff says:

> The existence of this evil had not been thoroughly understood by the public at large until the investigation of the (Philadelphia) election of 1909 was made by the Committee of Seventy. At this election, the evidence collected by the committee showed that in Philadelphia not less than 38,000 ballots had been marked by some other person than the voter. . . . Votes deposited by persons who allow others to mark their ballots . . . are in most cases purchased votes; in other cases they are votes of persons who are too indifferent to give the slightest attention to the form of the ballot or how to mark it. In other cases, and this is quite a large number, they are the votes of office holders or other persons subject to intimidation by a corrupt political machine, who are afraid to refuse to allow a representative of the machine into the voting compartment to see that they vote in its interests.[14]

Mr. Kennan, in his interesting account of the activities of the Addick's Machine in Delaware, ascribes a large part of its success to the use of the assisted voter. In Delaware the Governor appoints at each voting place a voter's assistant from each of the two large parties. Throughout the state these voter's assistants became part of the Addick's Machine. After marking the ballots in favor of the Addick's candidates, they would give the voter some sort of token which he would later exchange for money.[15]

[14] C. R. Woodruff, "Election Reforms," in the *National Municipal Review*, 5, 614.

[15] Kennan, George, "Voting Conditions in Delaware," in the *Outlook*, Feb. 22, 1903. Cf. Evans, op. cit., p. 72.

With the introduction of absent voting have come complaints that the dominant party is able to manipulate the ballots of the absentee voters as it sees fit. This charge has been particularly made in North Carolina both in newspapers and in official publications of the Republican party. Since forty-five states now make some provision for absent voting, fraud and corruption in connection with such ballots may well play an important part in determining election results. There are two main types of absent voting laws, the Kansas and North Dakota. Under the Kansas system the absent voter must secure a ballot on election day from the election officials of the place where he then is. He then sends his ballot back to his legal voting place. This method prevents the issuance of ballots prior to election day but clearly limits the effectiveness of the absent voting law. Evidently the voter can not easily secure a ballot if he is away from his own state. Furthermore, his ballot would not reach his polling place on election day, and the official count would be delayed. Under the North Dakota method, the voter may secure the ballot prior to election day, or may have it mailed to him. If the ordinary ballot is used, this expedites the employment of the endless-chain or Tasmanian dodge method of defeating the purposes of the Australian ballot. This danger may be obviated, however, by having the absent voter's ballot printed on colored paper, or by having it plainly marked "Official Absent Voting Ballot." Such distinguishing marks may tend to destroy the secrecy of the ballot, but this is not so great an evil as allowing the ordinary official ballot to be exposed to fraudulent uses. The problem of preventing the manipulation of

the absent voters' ballots by election officials is part of the larger problem of securing honest officials, and this is, of course, the greatest problem connected with securing fair elections.[16]

The presence or absence of corruption and fraud at elections depends in a very large part on the character of the election officials. If these are a part of some political machine and are intent on acting in its interests, regardless of the laws, courts, or public opinion, fraudulent practices will be prevalent. If the officials are honest, in all probability an honest election will take place. Mr. J. A. Woodburn in *Political Parties and Party Problems in the United States* has well summed up the importance of the honesty of election officials.

> It is difficult for the state and honest citizens to safeguard the ballot against corrupt and perjured election officials who intend to commit fraud. We may claim to have a government of laws and not of men, but after all, everything depends upon the men who operate the laws. As well expect grapes from thorns or figs from thistles as an honest ballot and good government from lawless and villainous election officers.[17]

Evidence before the Reed Committee investigating the Pennsylvania primary of 1926 strongly indicated that fraudulent registration, fraudulent voting, and fraudulent returns of the votes had been prevalent in Philadelphia and Pittsburgh for years, primarily because of the fact that the election officials were integral parts of the party machines. This fraud took place year after year notwithstanding the use of the Australian ballot.[18]

[16] For further discussion of absent voting, see pamphlet on *Absentee Voting in the 48 States in the Election of 1926* by R. C. Michelet and R. C. Brooks, *Political Problems and Electoral Problems,* pp. 413-18.

[17] P. 349, printed by permission of the publishers, G. P. Putnam's Sons.

[18] Report of Reed Committee, op. cit., pp. 96-120, 346-47.

Since it has become apparent that election frauds at present occur chiefly in counting the ballots and in making the returns of the election, there is a movement in many of the states for the introduction of voting machines. The use of these machines at elections has been authorized by law in nineteen states and also by act of Congress. They are not yet in actual operation, however, in all of the states where their use has been authorized. In general, the political bosses have opposed their introduction, and in some places have prevented their use although the voters or the legislature have ordered them to be installed. As long ago as 1904 the voters of Chicago went on record in favor of voting machines, but the bosses are still able to maintain the older method of voting by ballot. In 1921 the New York legislature made the use of voting machines compulsory in cities of the first class. Tammany objected very strongly, and several years of litigation ensued. The New York Court of Appeals finally indicated action lay with the Secretary of State who was empowered to introduce the machines if the New York City Board of Elections did not. The Secretary of State, a member of the Republican party, then began their installation, and in the election of 1926 voting machines were in use in 616 election districts of New York City.

The chief advantage connected with the use of the voting machine is the speed and accuracy with which votes may be taken and counted. The machine registers, counts, and adds each vote as it is cast, and there are devices that make it impossible to tamper with the results shown. At the end of the election the machine is locked, and the record stands until the machine is pre-

pared for the next election. This makes it possible for the record to be referred to by the proper authorities if a recount of the vote is desired. The machine also makes it impossible for the voter to place distinguishing marks on his ballot, which has been shown is one scheme devised to defeat the purposes of the Australian ballot. Where the voting machine is used, the voter registers his will by pressing down the proper levers, and there is no way by which when the returns are taken one person's vote can be distinguished from another person's.

It is undoubtedly true that corrupt political organizations can manipulate elections even though voting machines are in use. It is not unusual for the election official who represents the minority party to work in collusion with the representatives of the dominant group. Under such a situation methods can certainly be found to change the returns, but this is more difficult than under the older system of voting, and recent investigators of election conditions believe that these conditions would be much improved if voting machines were in use. In Pennsylvania, Governor Pinchot, after the election of 1926, appointed a committee to consider election abuses, and this committee strongly recommended the compulsory use of voting machines in the larger cities of the state. Professor J. G. Kerwin, after a survey of conditions in Chicago, recommended the use of voting machines as one of the means of improving the situation in that city.[19]

[19] "Electoral Administration in Chicago," *Amer. Polit. Sci. Rev.*, 21 (1927), 830. For a further discussion of voting machines, see T. D. Zukerman, "The Case for Mechanical Balloting," *Nat. Municipal Rev.*, 14 (1925), 226, and "The Voting Machine Extends Its Territory," *Amer. Polit. Sci. Rev.*, 21 (1927), 603; also a pamphlet on *Voting Machines* prepared by the Automatic Registering Machine Co., Jamestown, N. Y.

If voting machines are introduced, and if properly qualified and honest officials are put in charge of the elections, the abuses connected with counting the ballots and making the returns should be reduced to a minimum. In many cases today the election officials are petty members of corrupt organizations and are interested only in the small stipend they receive for their services and in keeping their political organization in power. To secure proper persons for these positions is difficult. Even if those best qualified could secure appointment they would usually not be willing to give their time. A committee of the National Municipal League has suggested that authority and responsibility for elections should be centered in a single commissioner chosen by the governing body of each county or each city with a population of fifty thousand or over. This commissioner should appoint all the various precinct election officials who should also act as the registration officials. These officials should be chosen by competitive examinations. They should then be instructed by the commissioner in the duties of their positions.[20] This method of choice is probably as good as can be devised. Its success, however, depends on the willingness of the better class of citizens to take the examinations and qualify for appointment.

American courts have commonly held that many sorts of fraudulent practices at elections are crimes at common law, and, therefore, that such acts are illegal even in the absence of specific statutes against them. In 1812 the Massachusetts Supreme Judicial

[20] The Outline of an Improved Method for Conducting Elections, prepared by the Committee on Electoral Reform of the National Municipal League, *Nat. Munic. Rev.*, 10 (1921), 602.

Court sustained an indictment against a person charged with voting twice in a town meeting. The court said:

There can be no doubt that the offense described in the indictment is a misdemeanor at common law. It is a general principle that where a statute gives a privilege, and one wilfully violates such privilege, the common law will punish such violation. In town meetings every qualified voter has equal rights and is entitled to give one vote for every officer to be elected. The person who gives more infringes and violates the rights of other voters, and for this offense the common law gives the indictment.[21]

In the same way the Delaware Court of General Sessions for New Castle County held that the impersonation of voters was a crime at common law, and that even if there had been no law in the state penalizing such action, it would be an indictable offense.[22] In making its decision that putting fraudulent votes into the ballot box was a crime, the Pennsylvania Supreme Court gave wide scope to the extent in which fraudulent practices at elections come under the common law. It said:

We are of opinion that all such crimes as especially affect public society are indictable at common law. The test is not whether precedents can be found in the books, but whether they injuriously affect the public policy and economy. It needs no argument to show that the acts charged in these indictments are of that character. . . . An offense against the freedom and purity of elections is a crime against the nation. It strikes at the foundation of republican institutions. . . . The ingenuity of politicians is such that offenses against the purity of elections are constantly liable to occur which are not specifically covered by statute. It would be a reproach to the law were it powerless to punish them.[23]

[21] Commonwealth *v.* Silsbee, 9 Mass. 417, 1812.
[22] State *v.* Fitzsimmons, 3 Boyce (Del.) 219, 1912.
[23] Commonwealth *v.* McHale, 97 Pa. 397, 1881.

The Arkansas Supreme Court has likewise held that the destruction of ballots is a common law offense. It said:

> It should be held a misdemeanor at common law to destroy the ballot box and ballots so long as they furnish evidence by which the right to enjoy the prerogatives of an office may be determined. Their destruction might materially aid a defeated candidate to acquire and hold a public office in defiance of the expressed will of the voters by making impossible a correct ascertainment of the result of the election. But that which prevents a correct ascertainment of the result tends as much to disturb the public order and do a public wrong as that which prevents either by force or bribery a free expression of the popular will. We therefore hold that they comprise public wrongs indictable at common law.[24]

These excerpts from court decisions show the great elasticity of the common law in dealing with fraudulent practices at elections. In the hands of a determined court the common law may become a most effective instrument for combating all kinds of election frauds. It has been shown in an earlier chapter,[25] however, that the framers of the various state constitutions were not satisfied with leaving certain election abuses crimes at common law, and that many provisions are found in the various constitutions that the legislatures shall pass laws for the protection of the purity of elections.

Thirty-eight states have enacted comprehensive statutes dealing with fraudulent registration.[26] These statutes prohibit a person registering when not qualified, registering for another person, registering under a fictitious name, or registering more than once. They

[24] Mason *v.* State, 55 Ark. 529, 1892.
[25] Chapter 1, pp. 9-13.
[26] Table 3, Column 1.

also provide penalties for registration officials who knowingly permit any of the above kinds of registration, or prevent qualified persons from registering.

It has been necessary for the higher courts to decide but few cases where patent violation of the laws against fraudulent registration was present. These have been decided in lower courts where no opinion was expressed, for in this class of cases there is usually only a question of fact to be determined. In a few cases, however, some provisions of the laws have been made more clear. In Missouri a person under indictment for registering under an assumed name claimed that he had not violated the law since no oath had been administered to him at the time of his registration. The state supreme court held that a person who knowingly and fraudulently registers as a legal voter under a name not his own is guilty of a felony, whether an oath is administered to him at the time or not.[27] In an indictment in Delaware for registration in more than one election district, it was claimed that no punishment could be inflicted unless a criminal intent was proved. But the court of general sessions decided that it was only necessary to prove that such an act had taken place, regardless of the intent.[28] The prevailing view of the courts seems to be that minor irregularities in registration will not be penalized or the registration annulled. It has been said:

> Where the names of voters appear upon the official registration lists, even though there may have been irregularities in the entering of the names thereon, they are nevertheless entitled to vote, if qualified voters and entitled to register; and a contest which merely brings in question the regularity of putting

[27] State *v.* Cummings, 206 Mo. 613, 1907.
[28] State *v.* Caldwell, 15 Del. 555, 1895.

their names on the registration lists is not sufficient, unless it alleges facts showing that they could not in any event have been properly so entered.[29]

Whether particular acts are to be considered fraudulent or simply irregular is a question to be determined by the courts.

For the better prevention of fraudulent registration some states have felt it necessary for registration to be completed an appreciable length of time before election day. If, for example, no registration is permitted within the last week before election, time will be given for investigations concerning any doubtful cases on the registration books, and such a provision will also tend to prevent the last minute registering of unqualified voters. Much litigation has arisen concerning the length of time before election that registration can be required to be completed. The courts in deciding this question have adopted reasonableness as a criterion. In a leading case, it was said:

> This court is of opinion that in all cases, where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate such right in a prompt, orderly, and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as under the pretense and color of regulating, should subvert or injuriously restrain the right itself.[30]

[29] Cole *v.* McLendon, 109 Ga. 183, 1899.

[30] Capen *v.* Foster, 12 Pick. (Mass.) 485, 1832; also People *v.* Hoffman, 116 Ill. 587, 1886; State *v.* Corner, 22 Neb. 265, 1887; Dell *v.* Kennedy, 49 Wis. 555, 1880; Dagget *v.* Hudson, 43 Ohio St. 548, 1885; State *v.* Butts, 31 Kans. 537, 1884.

Again the reasonableness of such legislation is a question of fact for the courts to determine.

All of the states have laws against illegal voting.[31] Illegal voting is usually defined as voting more than once, voting when not qualified, or impersonation of another voter. These acts also apply to election officials knowingly permitting illegal voting, or preventing qualified voters from casting their ballots. There are few cases on record in which the courts have been called on to make decisions in regard to the grosser forms of illegal voting. Practically all such cases are decided in the minor courts, and few appeals have been taken. In Oregon the statute forbidding one person to induce another to vote in a place where he is not a *bona fide* resident has been upheld.[32] The Illinois Supreme Court in construing its statute against the impersonation of another voter decided that it applied equally to a person aiding and abetting the impersonation. The court said:

> It was proved plaintiff in error was present when the crime was committed; that he aided, advised, abetted, and assisted actively and personally in its commission—in fact, that he controlled and directed the perpetration of the crime. The offense is a felony. . . . Under our statute he is deemed a principal offender, and is to be tried and punished accordingly.[33]

Through the introduction of the Australian ballot system most of the states have attempted to provide secrecy in voting. But the courts will not permit legislation so drastic that disabled or illiterate voters will

[31] Table 3, Column 2.
[32] State *v.* Reed, 52 Ore. 377, 1908.
[33] Lionetti *v.* People, 183 Ill. 253, 1899; also Brennan *v.* People, 113 Ill. App. 361, 1904; State *v.* Timothy, 147 Mo. 532, 1899.

be deprived of the suffrage. The Michigan Supreme Court has held that if the effect of the election law was to deprive the blind and cripples of the opportunity of voting, it would be void, as they were given this right by the Constitution.[34] The Kentucky Court of Appeals has decided that a provision for secrecy of the ballot was invalid in so far as it operated to deprive illiterate voters of the right to vote.[35] To meet these objections of the courts many legislatures have provided that voters unable to mark their own ballots may be given assistance by certain specified persons. It has been shown that these provisions have in some places been used in such a way as practically to destroy the secret ballot. In an attempt to stop the abuses connected with this assisted-voter clause, thirty-two states have passed laws making it illegal for voters to make false statements concerning their disability to mark their own ballots, and prohibiting those giving assistance from attempting to influence or deceive such voters, or to make known how they voted.[36]

What, then, is necessary to entitle the voter to assistance? Generally, provision is made for an oath or declaration by the voter that he is disabled, and, as a rule, such a provision is held to be mandatory. The Kentucky Court of Appeals in its decision holding the oath mandatory stated that proof of disability cannot be supplied by the appearance of the voter or by personal knowledge of the election officials, and that ballots voted without such an oath should not be counted.[37]

[34] Detroit *v.* Rush, 82 Mich. 532, 1890.

[35] Rogers *v.* Jacob, 88 Ky. 502, 1889; also Pearson *v.* Brunswick Co., 91 Va. 322, 1895; Klein *v.* McDonald, 52 N. Y. S., 898, 1896.

[36] Table 3, Column 3.

[37] Major *v.* Barker, 99 Ky. 305, 1896.

In Illinois the provision for the oath is mandatory even though the voter is blind.[38] In other jurisdictions it is held that the requirement for such oath is not mandatory, and the mere failure of the officers to administer it, will not, in the absence of fraud or imposition, invalidate the ballots cast without it. The Alabama Supreme Court has stated that it is the fact of disability, rather than the sworn declaration that merits the assistance for which the law provides.[39]

The Pennsylvania District Court (7th. Dist.) has supplied the most comprehensive definition of what constitutes disability.

> It includes physical, mental, and educational incapacity, but not complete mental incapacity, such as insanity, as, one who is blind or cannot see so as to read the ballot; who is paralyzed or has lost his hands. . . . Again, one who cannot read, or cannot read understandingly, the English language, is disabled and entitled to the assistance of another voter, just as much as if he should be stone blind. . . . But one who voluntarily disables himself . . . is not entitled to the benefits of the provision, as where one gets drunk. . . . We do not include in the definition the voter who, purposely, or who, through want of time, inattention, or other apparently good reason, has not informed himself of the manner of voting under the act. . . . If his alleged disability is a palpable mistake, fraud, or subterfuge, and is so found by the board, they, as in any other case affecting the right to vote, in the exercise of their judicial discretion, may deny his request.[40]

Flagrant violation of the law governing assistance to voters has been condemned by the courts on several

[38] Gill *v.* Shurtleff, 183 Ill. 440, 1900. Other decisions holding the oath mandatory are: Huston *v.* Anderson, 145 Cal. 320, 1904; Patrick *v.* Runyon, 50 S. W. 538, 1899 (Ky.); Reynolds *v.* May, 99 Mich. 538, 1894.

[39] Patton *v.* Watkins, 131 Ala. 387, 1901. Cf. Hope *v.* Flentge, 140 Mo. 390, 1897.

[40] *In re* Election Instructions, 2 Pa. Dist. 1, 1892.

occasions. The California Supreme Court held that where illiterate and disabled electors were assisted without regard to the conditions regulating assistance in such cases, the votes were clearly illegal.[41] Under an Alabama statute providing that the officer assisting a voter should mark the ballot as directed by the voter, without suggestion or interference, the substitution of his own for the voter's choice was held a flagrant violation of an official trust and vitiated the ballot.[42] In Kentucky a set of election officers tried to extend the assistance clause to taking the ballots to the voter at a point outside the polls. But the Court of Appeals decided that it was not contemplated that voters should be permitted to vote at any other place than the regular voting place, and that ballots taken outside the polling place to disabled voters were invalid.[43] The Oklahoma statute provides that the poll clerk shall render assistance to the disabled. In construction of the statute, it was decided that where assistance had been rendered by the judges of election, the ballots were intentionally exposed and should be rejected.[44] But the more general rule is that mere irregularities do not invalidate the ballots in the absence of some showing of fraud. The Arkansas statute declared that such ballots must be prepared in the presence of two judges. In a case where only one judge was present, and there was no showing of fraud, the ballot was declared valid.[45] Under the Kentucky statute assistance must be given by the clerk

[41] Patterson *v.* Hanley, 136 Cal. 265, 1902; also Banks *v.* Sergent, 104 Ky. 843, 1898; Napier *v.* Cornett, 68 S. W. (Ky.) 1076, 1902.
[42] Patton *v.* Watkins, 131 Ala. 387, 1901.
[43] Cole *v.* Nunnelly, 140 Ky. 138, 1910.
[44] Board *v.* Dill, 26 Okla. 104, 1910.
[45] Freeman *v.* Lazarus, 61 Ark. 247, 1895.

alone, but it has been held that an occasional or accidental rendering such assistance by a judge or sheriff of election will not render him liable to prosecution or invalidate the ballot.[46]

Voters at times place distinguishing marks on their ballots for the purpose of evading the provisions of the election laws requiring secrecy in voting. These marks enable those who have bribed or otherwise influenced such voters to know that they have cast their ballots as directed. Before the introduction of the Australian ballot system the election laws of many of the states contained provisions actually requiring some sort of distinguishing mark on the ballot. Several states required each ballot to be numbered, and the same number to be recorded on the list of voters opposite the voter's name.[47] This made it possible to identify the ballot cast by any elector. In other states the election law permitted the voter to write his name on the back of the ballot, and in Rhode Island from 1822 to 1844 the voter's signature on the ballot was required.[48] That there has been a decided change in public policy concerning the placing of distinguishing marks on ballots is shown by the fact that twenty-six states have enacted statutes providing that ballots containing such marks are void, and that any person found guilty of making these marks shall be deemed guilty of a misdemeanor.[49]

The Indiana Supreme Court has explained the reason for such statutes:

[46] Commonwealth *v.* Kaufman, 126 Ky. 624, 1907.
[47] E. C. Evans, *A History of the Australian Ballot in the United States*, p. 10.
[48] Ibid.
[49] Table 3, Column 4.

It was to guard against the possibility of the vote-seller indicating to the buyer in advance how his ballot would be distinguished from the other ballots in the box, so that the buyer or his agent, who may be one of the election officers, could tell, when the bribed voter's ballot was reached in the count, that such bribed voter had carried out his contract. It was believed that if it could be rendered impossible for the buyer or his agent to identify the ballot voted by the purchased voter from a mere indication beforehand how it should be marked, the desired end would be reached, because it was believed that as a general thing a vote-buyer would not risk his money on a vote-seller without some assurance other than the mere word of the bribed voter.[50]

In cases arising out of these provisions the courts have often found it difficult to determine whether certain peculiar markings have been placed on the ballots to serve as distinguishing marks or not. The general rule established by the courts is that ballots will not be treated as void merely because of irregular or unauthorized markings which appear to have been made innocently as the result of awkwardness, mistake, or ignorance, if the lawful intent of the voter can be ascertained. This principle has been stated by the Iowa Supreme Court in the following language:

It is not practicable to adopt a rule in regard to identifying marks which would be applicable to all cases. It will not do to say that all ballots which bear marks not authorized by law should be rejected. All voters are not alike skilful in marking. Some are not accustomed to using a pen or pencil, and may place some slight marks on the ballot inadvertently, or a cross first made may be clumsily retraced. It is evident that in such cases, and in others where the unauthorized mark is not of a character to be used readily for the purpose of identification,

[50] Sego *v.* Stoddard, 136 Ind. 297, 1893. Cf. Betchel *v.* Albin, 134 Ind. 193, 1892.

the ballot should be counted; but where the unauthorized marks are made deliberately, and may be used as a means of identifying the ballot, it should be rejected.[51]

The Illinois Supreme Court has said:

Whether a given mark on a ballot is or is not a distinguishing mark . . . is largely, if not wholly, a question of fact. . . . In order to warrant the rejection of a ballot because of a distinguishing mark, the court should be able to say that such mark was placed there by the voter for the purpose of distinguishing his ballot from others.[52]

A few of the state courts uphold a principle at variance with this general rule. They hold that the provisions for marking the ballot as laid down in the election laws are mandatory and must be strictly followed. The Michigan Supreme Court has held

That any mark upon a ballot, other than one appropriate and necessary under the law to designate the intention of the voter, must be regarded as a distinguishing mark. Any other rule would result in endless confusion, and would make the local inspectors judges of the voter's intention, and lead to bitter controversies. . . . While, in some instances, a rigid adherence to the prescribed method may result in throwing out honest ballots, we have not been able to find any safe middle ground to occupy. Either the question of the voter's intent must be held a question of fact in all cases, to be determined by the inspectors on an examination, or it must be held that such marks, and such only, as can under the law, be properly placed upon the ballot, and as are necessary to be there placed to register the voters' intent, are permissible.[53]

[51] Voorhees *v.* Arnold, 108 Iowa 77, 1899; also Ward *v.* Fletcher, 36 S.D. 98; Rexroth *v.* Schein, 206 Ill. 80, 1903; Grubb *v.* Turner, 259 Ill. 436, 1913; Matter of Fallon, 197 N. Y. 336, 1910.

[52] Winn *v.* Blackman, 229 Ill. 198, 1907.

[53] Attorney General *v.* Glaser, 102 Mich. 396, 1894; also *in re* Vote Marks, 17 R. I. 812, 1890; Curran *v.* Clayton, 86 Me. 42, 1893; Mauck *v.* Brown, 59 Neb. 382, 1899.

The ruling of the Michigan Supreme Court that the provisions for marking the ballots as laid down in the election laws must be strictly carried out offers the greater promise for prevention of the use of distinguishing marks. The more general ruling that every ballot with any sort of unusual marking presents a question of fact to be decided upon by the courts may lead to a tremendous amount of controversy and dissatisfaction. Under this ruling the election officials must first decide whether the ballot has been marked properly. In some cases this may mean acceptance or rejection according to the political bias of the majority of these officials. If the election has been close, there will undoubtedly be an appeal to the courts. At times there seems little reason for the decision of the courts concerning which ballots are to be counted and which declared void.[54] It is true that the acceptance of the ruling of the Michigan court may invalidate some honest ballots. It is quite possible, however, that if this ruling were generally accepted, voters would be more careful in the preparation of their ballots. There are probably relatively few who are not able to make the proper markings on the ballot, and the invalidation of the ballots of these few would cause no great harm—certainly less harm than that caused by a ruling making it easier for ballots with distinguishing marks to be counted.

As has been pointed out,[55] most of the states have now recognized primaries as an integral part of the election system, and have extended to the primaries

[54] See R. C. Brooks, *Political Problems and Electoral Problems*, p. 394, for an illustration of marks held valid and of those held invalid.

[55] Chapter 1, p. 17.

their laws against abuses at the general elections. It was also shown that this extension, particularly in regard to bribery, had been upheld by the courts. The courts have equally held the various laws against fraudulent practices applicable to primary elections. The Virginia Supreme Court of Appeals in deciding this said:

> The primary when adopted by a political party becomes an inseparable part of the election machinery, and if a candidate to be voted for at the general election is to be selected at a primary, it is impossible to secure the regularity and purity of the general election without in the first place guarding against irregularity and fraud at the primary election. The primary election constitutes an essential part, and fulfills an essential function in the plan to promote honesty in the conduct of elections. . . . If there be fraud in the primary election, which is the very root from which the whole system of regulation springs, it is vain to regulate the conduct of the general elections, for the fraud by which the nominee at the primary election is chosen enters into and is an ineradicable constituent in the result. However fair the general election may be, if at that election men have no choice but to vote for candidates who have been nominated by fraudulent practices at primaries—the effect of the election must be the consummation of a fraud, and the defeat of the will of the people.[56]

The courts, then, have held that state regulations for the prevention of fraud at primaries are as valid as those for the prevention of fraud at the general elections.[57] But the further problem of who shall be eligible to vote in the primaries of the various parties presents itself. A discussion of the merits of the "open" and

[56] Commonwealth *v.* Willcox, 111 Va. 849, 1911. Cf. McCook *v.* State, 91 Ga. 740, 1893; G. W. McCrary, *The American Law of Elections*, p. 166.

[57] The United States Supreme Court in the case of Newberry *v.* U. S., 256 U. S. 232, held that so far as the federal government is concerned a primary is not an election, and that, therefore, Congress has no power to regulate primaries. For discussion of this decision see Chapter 7.

"closed" primaries does not fall within the scope of this study. It is simply the purpose here to show that many of the states in establishing their primaries have enacted legislation making it unlawful for a person to participate in the primary of another party than his own. Tests to determine the voter's proper party affiliation are laid down. The party whose ticket he supported at the last election, or the one which he states he will support in the next election is decreed to be the one to which he belongs.[58] Fear that the voters of one party will use fraudulent means to control the nominations of its rival party is the reason for provisions of this sort.

In several cases the validity of these provisions has been upheld by the courts. The California Supreme Court has upheld a statute requiring that at the time of registration for primaries or before the registration period is over voters must state their party affiliations. The court said:

> It is just as reasonable to require the elector to range himself with some particular party for the purpose of the primary election, as it is to require registration of all the electors who desire to vote at the general election. . . . It is contended that the test prescribed is unreasonable, because with the close of registration the elector loses his right to change his party allegiance in consequence of a change in his political convictions. . . . This inconvenience certainly does result from the provisions of the Act, but the legislature . . . probably regarded such sudden conversions during the short interval between the close of registration and the date of the primary election as likely to be of such rare occurrence as not to justify the omission of a provision evidently designed to prevent unscrupulous and mercenary electors from holding

[58] Table 3, Column 5.

themselves free down to the day of election to vote with any party, upon any corrupt motive.[59]

The Louisiana Supreme Court very strongly expressed the opinion that the legislature may forbid a person voting in any other primary than the one held by the political party with which he is affiliated. This court said:

It is of the very essence of a primary that none should have the right to participate in it but those who are in sympathy with the ideas of the political party by which it is held. Otherwise, the party holding the primary would be at the mercy of its enemies, who could participate for the sole purpose of its destruction by capturing its machinery or foisting upon it obnoxious candidates or doctrines.[60]

All efforts to purify elections are valueless unless the election officials properly perform their duties. By negligence or by willful misconduct they may nullify the expressed will of the voters. Fraud by election officials in counting the ballots or in making returns of the elections is generally made a felony by law. Fraud at elections can only be punished after it is committed, but fraudulent registration may be prevented by injunction proceedings. The Colorado Supreme Court has said:

We do not see why a court of equity, in the exercise of its ordinary equitable jurisdiction, has not the same power to restrain a public officer from registering or certifying fictitious persons, or making or changing original registration after the time fixed by the statute, as it would have to prevent a public officer from entering upon public records false or forged in-

[59] Schontag *v.* Cator, 151 Cal. 600, 1907.

[60] State *v.* Michel, 121 La. 374, 1908; also Morrow *v.* Wipf, 22 S. D. 146, 1908; Ladd *v.* Holmes, 40 Ore. 167, 1901; Zent *v.* Nichols, 50 Wash. 508, 1908; Rouse *v.* Thompson, 228 Ill. 522, 1907.

struments. . . . There can be no question that it is within the power of a court of equity to prevent or render harmless such illegal acts, and in doing so, it is in no sense supervising or controlling the conduct of an election.[61]

The Kentucky Court of Appeals declared that a statute making it unlawful for election officers to attempt to vitiate ballots applied equally to inspectors or to anyone having access to the ballots.[62] If the election law provides that ballots must be indorsed by the judges of election, ballots which do not contain such indorsement will be held void. In an Arkansas election one judge endorsed the initials of another judge. The state supreme court held this invalid, saying:

If each judge indorses the other's initials and not his own, then there are no indorsements as the law provides. . . . And the very purpose of the law to prevent spurious ballots, to prevent conspiracies and combinations among the judges themselves, to make each a check upon the other, is frustrated.[63]

In Oregon it has been held that the law forbidding the fraudulent count of the votes at elections applies equally to primary elections. The supreme court said:

We cannot conceive that it was the intention of the legislative body that, upon every future modification of the election laws, this section would have to be re-enacted, or a similar section passed. . . . To give to this section the narrow construction contended for would have made it a dead letter long since. . . . It was meant to meet a known and continuing potential condition, which would necessarily be present under any statute relating to elections without regard to the time of

[61] Aichele *v.* People, 40 Colo. 482, 1907; also People *v.* District Court, 33 Colo. 16, 1904.

[62] Commonwealth *v.* Goulet, 137 Ky. 464, 1910.

[63] Rhodes *v.* Driver, 69 Ark. 501, 1901; also Orr *v.* Bailey, 59 Neb. 128, 1899; Slaymaker *v.* Phillips, 5 Wyo. 453, 1895; Kelley *v.* Adams, 183 Ill. 193, 1899.

its passage or the purpose of the election. . . . It is immaterial under what law relating to elections these conditions may be present.[64]

The officials must take precautions in guarding the ballots after they have been cast equal to those taken while the ballots are being cast. In a leading case, it was said: "Security of the ballot after being cast is quite as important as freedom in casting it, if the result as finally announced shall represent the actual choice of the electors."[65] The election officials are also liable for any alteration of the certificate of election while it is in their possession. The Delaware Court of General Sessions said:

Under the election laws the inspector is the sole custodian of the election certificate . . . from the close of the election until the meeting of the Board of Canvass, and if the proof shows that the certificate was altered, and that by carelessness and negligence the inspector enabled and permitted some other person to make such alterations, the law presumes that he knowingly permitted it, and his assent thereto is implied.[66]

The election officials are empowered to refuse the right of voters to cast their ballots under conditions laid down by law. Under what circumstances can a properly qualified voter recover damages from an official for such refusal? It is well established that a willful and malicious refusal to accept the vote of a duly qualified elector gives rise to a cause of action for damages.[67] Whether malice and corruption are essential ingredients in the cause of action is a question upon

[64] State *v.* Robinson, 87 Ore. 514, 1912.
[65] Davenport *v.* Olerich, 104 Iowa 194, 1897; also Dennison *v.* Astle, 281 Ill. 441, 1917; Pedigo *v.* Grimes, 113 Ind. 148, 1887.
[66] State *v.* Brand, 16 Del. 459, 1897.
[67] Perry *v.* Reynolds, 53 Conn. 527, 1885; Hill *v.* Carr, 186 Ill. App. 515, 1914; Lane *v.* Mitchell, 153 Iowa 139, 1911.

which the decisions are not in harmony. By the weight of authority an election officer is not liable in damages unless the act of such officer is proved corrupt or malicious. The Maryland Court of Appeals has said: "In such a case, this court is of the opinion, the officer cannot be held legally responsible for anything more than an honest and faithful exercise of his judgment, and is not liable for mistakes honestly made."[68] Sustaining the same view, the Kentucky Court of Appeals said:

> Whilst it is admitted to be essential to the just right of electors and also of candidates that the right of suffrage should be freely exercised by the qualified voter, it is equally essential that those who, called by their official duty to preside at elections, and to decide on the qualifications of voters, should be sustained and encouraged in the faithful and conscientious discharge of their duty. No action ought then, in principle, to be maintainable against the judges of an election, whose functions are to some extent judicial, for refusing to receive a vote, without alleging and proving that in so acting they were influenced by bad motives, and decided contrary to their own honest convictions of what was right and proper.[69]

Following the leadership of the Massachusetts courts, in a few jurisdictions, a right of action for damages is held to lie against officers, who, through a mistake of judgment, prevent qualified electors from exercising their right to vote. In its expression of this doctrine the Massachusetts Supreme Court has said:

> If a civil action does not lie against them, the party is deprived of his franchise without any relief, and has no way of estab-

[68] Bevard *v.* Hoffman, 18 Md. 479, 1862.

[69] Morgan *v.* Dudley, 18 Ben Monroe (Ky.) 711, 1857. Further decisions sustaining the same principle are: Perry *v.* Reynolds, 53 Conn. 527, 1885; Jenkins *v.* Waldon, 11 Johns (N. Y.) 114, 1814; Gordon *v.* Farrar, 2 Douglas (Mich.) 411, 1847; Wheeler *v.* Patterson, 1 N. H. 88, 1817; Rail *v.* Potts, 8 Humph. (Tenn.) 225, 1847; Pike *v.* Megouin, 44 Mo. 492, 1869; State *v.* Porter, 4 Del. 556, 1845; Pierce *v.* Getchel, 76 Me. 216, 1884.

lishing his right to any future suffrage. Thus a man may be prevented for his life from exercising a constitutional privilege by the incapacity or inattention of those who are appointed to regulate elections. The decision of the selectmen is necessarily final and conclusive as to the existing election. No means are known by which the rejected vote may be counted by any other tribunal, so as to have its influence upon the election. . . . Now, if a party duly qualified, is unjustly prevented from voting, and yet can maintain no action for so important an injury, unless he is able to prove an ill design in those who obstruct him, he is entirely shut out from a judicial investigation of his right; and succeeding injuries may be founded on one originally committed by mistake. He may thus be perpetually excluded from the common privilege of citizens without any lawful means of asserting his rights and restoring himself to the ranks of an active citizen. Such a doctrine would be inconsistent with the principles and provisions of our free constitution.[70]

But the courts accepting this view recognize a difference in the damages that will be awarded in cases where the refusal has been simply because of mistake. The Ohio Supreme Court, while asserting the right to action for damages, held that in the absence of malice, where the suit is brought merely to assert the right to vote, the damages will be nominal and small. It is only in cases of intentional injury, arising from corrupt motives, that severe damages will be inflicted.[71]

Under what conditions will the courts disallow the election returns because of the presence of fraudulent practices? The prevailing rule is that if fraud and irregularities occur in the conduct of an election to such an extent that it is impossible to separate with

[70] Lincoln *v.* Hapgood, 11 Mass. 350, 1814.

[71] Jeffries v. Ankeny, 11 Ohio 372, 1842. Other cases upholding the same principle are: Long *v.* Long, 57 Iowa 497, 1881; Gillespie *v.* Palmer, 20 Wis. 572, 1866.

reasonable certainty the legal from the illegal votes, the returns from the precincts wherein the frauds occur should be excluded.[72] At a Michigan election an interpreter was appointed to assist the Dutch voters in a certain precinct. Proof was furnished that he exercised undue influence in marking these ballots. The state supreme court decided that the vote of the precinct should be refused, stating:

> While we are not prepared to say that the vote of a precinct should be thrown out for a failure on the part of the inspectors to attain absolute perfection in the conduct of an election, where, as in this case, the whole body of electors have been subjected to the possibility of a forbidden influence, and a large portion are shown to have been approached in forbidden ways, under circumstances strongly indicating a fraudulent design, the vote of the precinct should be thrown out.[73]

But electors are not to be deprived of the result of their votes at an election by the mistake of an election officer when this mistake does not appear to have changed the election results.[74]

Judge McCrary, probably the leading authority on American election laws and practices, sums up the opinions of the courts in regard to when elections shall be declared void, as follows:

> There is a difference between fraud committed by officers, or with their knowledge and connivance, and a fraud committed by other persons, in this; the former is ordinarily fatal to the return, while the latter is not fatal, unless it appear that it rendered doubtful or changed the result. If an officer is detected in a willful and deliberate fraud upon the ballot box, the better opinion is that this will destroy the integrity of his

[72] Vigil *v.* Garcia, 36 Colo. 444, 1906.
[73] Attorney General *v.* Stillson, 108 Mich. 419, 1896.
[74] People *v.* Bates, 11 Mich. 362, 1863.

official acts, even though the fraud discovered is not of itself sufficient to affect the result. The reason of the rule is that an officer who betrays his trust in one instance is shown to be capable of defrauding the electors, and his certificate is good for nothing.[75]

It has been shown during the course of this chapter that most of the states have enacted comprehensive legislation dealing with various fraudulent practices at elections. These statutes usually provide both that the individuals committing the fraudulent acts shall be punished and that ballots tainted with fraud shall not be counted. The courts in trying individuals for acts of fraud have not allowed the use of technicalities to prevent the laws from being enforced. In deciding on the validity of ballots, however, the opinions of the courts have not been so clear. As has been shown, the various courts have reached no unanimity of opinion concerning what invalidates a ballot, and it is probable that the more widely held opinion may permit certain ballots to be counted which have been cast with fraudulent intent. The courts are undoubtedly correct in their principle laid down that acts of fraud committed by a few individual voters will not invalidate an election. It must be proved that cases of fraud among voters were so numerous that because of them the election results may have been changed. But acts of fraud by election officials tend to throw suspicion on the entire results of the election. It is possible to compute the number of votes affected by the fraudulent practices of private individuals, but it is not possible to determine how many have been affected by fraud on the part of election officials. Proof that such officials have committed fraudulent

[75] G. W. McCrary, *American Law of Elections*, sec. 539.

practices, therefore, is generally held to be sufficient grounds for declaring an election void.

It is impossible to make a direct statement concerning the results achieved by laws against fraudulent practices at elections. It has been shown that the grosser forms of fraud have been held illegal by the courts throughout our history, and yet fraudulent practices have been present. There is probably sufficient evidence, however, for the belief that these practices are not so prevalent as they were before registration of voters was required and before the introduction of the Australian ballot, and, especially in the larger cities, of the voting machine. The Australian ballot has probably done more to check fraud than has any other one thing, and it is believed that the adoption of this system of voting throughout the United States, with provisions in the system to meet such devices as the Tasmanian dodge and the assisted voter, will reduce fraudulent practices to a minimum. This statement is, of course, based on the assumption that honest and intelligent election officials will be placed in charge of the elections. If this assumption is false, then no voting system and no penal provisions will prevent a certain number of elections from being carried by fraudulent means.

CHAPTER IV

THE REGULATION OF POLITICAL ADVERTISING

A LARGE part of the appeals for political support today is made through various forms of advertising. The great increase in the number of voters has made it impossible for candidates to meet all voters personally, or to influence them from the platform. More and more candidates and parties are appealing for votes through newspapers, circulars, and posters.[1] Of course, it is questionable how much influence these appeals have. Will voters read the advertisements, and if they read them will their political opinions be affected?

It seems very clear that if newspaper columns are to be used to obtain publicity for the political views of candidates and parties and to seek support for these views, the material furnished newspapers by the candidates and parties should not be run as ordinary news stories. It should be made known to the readers of the paper that such articles have been furnished by one of the parties or candidates, and it should be made known whether the newspaper has received payment for their publication. Twenty states have decided that the reading public must be informed concerning what is paid political advertising and have passed laws that this material must be marked "paid advertisement."[2] This designation will show the voter that he is not reading an unbiased discussion of a political platform or of a candidate's record.

[1] It is possible, however, that the radio may largely supersede the newspapers as the chief medium for political discussions.

[2] Table 4, column 1.

In line with the increasing belief that it should be possible to attach responsibility to some individual or individuals for the various acts of government is the feeling that some one should assume responsibility for the statements made in political advertising. To bring this about many of the states have gone beyond merely requiring that political advertisements shall be designated as such. Twenty-four states have provided that all such advertisements must bear the names and addresses of the persons submitting them for publication.[3]

The nature of the contents of political advertising has been regulated in various ways by different states. Four states have made it unlawful to circulate campaign literature reflecting on a candidate's character, integrity, or morality.[4] North Carolina has declared it illegal to publish or circulate false derogatory charges against candidates.[5] An Oregon statute provides that the author or any person helping to circulate a letter, circular, or poster containing false charges against a candidate is guilty of criminal libel. But it can be held a sufficient defense if an accused person proves he had reasonable ground for believing the statements true and also proves that at least fifteen days before such statements were printed they were served upon the candidate, and the candidate had opportunity to make reply.[6] In Florida it is unlawful to publish an attack on a candidate within eighteen days before an election unless a copy of this attack is served on him more than eighteen days before the election.[7] Nevada requires all attacks on candidates

[3] Table 4, column 2.
[4] Table 4, column 4.
[5] Cons. Stats., 1919, sec. 4185.
[6] Laws, 1909, c. 3.
[7] Comp. Laws, 1914, sec. 3841 tt.

to be submitted to them at least five days before publication.[8] New Hampshire applies the penalty for forgery to any one signing or publishing letters or documents used in political campaigns representing them to have been written by others.[9]

Many of these provisions against the publication or circulation of false charges against candidates are probably unnecessary, for, doubtless, such actions could be dealt with under the general laws against libel. They are, however, indications of the belief that in political campaigns abuses of this sort are unusually prevalent and should be definitely pointed out as illegal.

The courts have given an opinion in only one case arising under a statute of this sort. Washington has a law which prohibits any person knowingly and willfully to make any false assertion or to propagate any false report concerning a candidate with the view of preventing his election.[10] An Aberdeen newspaper published as paid political advertising statements alleged to contain false assertions about a candidate. The court upheld the indictment, saying:

> The object of the privilege accorded to published comments upon public officers or those seeking public office is to inform the electorate of the fitness or unfitness of those falling within either class. To permit the publication of a falsehood concerning a candidate for office which either charges him with the commission of a crime or being morally depraved would be subversive of the very purpose from which the privilege springs. The press is allowed a large liberty in commenting upon the character and fitness of a candidate for public office.

[8] Rev. Laws, 1919, p. 2723.
[9] Pub. Stats., 1901, c. 39, sec. 15.
[10] Remington Code, sec. 4964.

This liberty, however, does not give it free license to promulgate falsehoods.[11]

Michigan has provided more detailed regulation for political advertisements than any other state. The legislature of that state has declared it unlawful for a candidate directly or indirectly to post, or pay for posting on or in any building, tree, post, or other object within the territory where he is a candidate, any campaign card, banner, or other advertising material intended to advance his candidacy. Campaign cards and hand-bills may not be more than four inches long and two and one-quarter inches wide. It is unlawful to have political advertisements in magazines, on programs, or bills of fare. Such advertisements are limited to newspapers which have been in circulation at least three months before the advertisement is inserted. Lithographs in newspapers are limited to two inches in length and one and one-half inches in width, and not more than ten per cent. of the type in newspaper advertisements may be larger than that used in the editorials of that paper.[12]

Some of the states have decreed that there shall be no last minute attempts to sweep the voters off their feet by means of the various kinds of campaign literature to which there is necessarily no opportunity for the other parties or candidates to reply. A Minnesota statute provides that it shall be a misdemeanor for any person at any place on the day of a primary or election to circulate or distribute, or cause to be circulated or distributed, any campaign cards, placards, or campaign literature of any kind whatsoever.[13] A somewhat simi-

[11] McKillip *v.* Gray's Harbor Publishing Co., 100 Wash. 657, 1918.
[12] Public Acts, 1909, no. 281, secs. 47-49.
[13] Gen'l. Stats., 1923, sec. 551.

lar Florida statute declares it a misdemeanor to have or to distribute near any polling place any cards, pictures, literature or other writing against any candidate.[14] It is evidently legal under this statute to circulate campaign literature favorable to one candidate; it merely must not be opposed to the other candidates.

It is a fairly simple matter to regulate political advertising both in newspapers and elsewhere. But the most effective publicity for parties and candidates comes through newspaper editorials and through the way in which newspapers treat the various policies of a party and the activities of a political campaign. Many candidates have believed that their chances for success were materially lessened by the treatment their candidacies received from the newspapers. It is sometimes alleged that there has been a conspiracy of silence by newspapers against a particular candidate. In the campaign of 1924 Senator La Follette thought certain newspapers were not giving his campaign the space it deserved.[15] But even if there is no conspiracy of silence, it may be possible by placing the news concerning one party or candidate in a more favorable position, or by a manipulation of the head lines, for a paper to give one side a great advantage in the campaign. Naturally, no pretense of neutrality is made in most editorial columns.

At the Conference of Governors in 1913 the question of the influence of newspapers in political campaigns was thoroughly discussed. Governor Ammons of Colorado said:

[14] Rev. Gen'l. Stats., 1920, sec. 5906.

[15] He particularly thought he was discriminated against in the use of the radio.

The man who puts a paid advertisement in the papers of this state is the biggest political chump who has ever come inside its boundaries. The moment it is headed as an advertisement it has lost every particle of influence it had. We have several big newspapers in Colorado and every one of them has a wide political influence. Each has its certain line of readers who follow it. . . . The first thing you must do, under this modern system of election, is to regulate this influential reading matter that is going before the people. . . . The newspapers of Colorado, if they wish to, can defeat any man in the world, or can elect any man in the world, despite party organizations and every other influence combined.[16]

The majority of the governors agreed with Governor Ammons, but Governor McGovern of Wisconsin dissented. He said:

The editorial column of the average newspaper has but little influence with the people. . . . I have never known any one to be seriously injured by bitter editorial or newspaper attack, or to be very greatly benefited by fulsome praise.[17]

It is perfectly legitimate for newspapers to support a candidate or party as strongly as they please. But the states are trying to curb bought newspaper support. Seven states have enacted statutes making it unlawful to purchase such support.[18] In New York it is a misdemeanor to solicit money or other property from a candidate for an elective office as a consideration for support by a newspaper or other publication.[19] In addition to providing that all political advertising shall be designated as such and that the advertisements shall bear the name and address of those responsible for them, Minnesota, New Hampshire, and Wisconsin re-

[16] *Proceedings of the Conference of Governors,* 1913, pp. 164-5.
[17] Ibid., p. 161.
[18] Table 4, Column 3.
[19] Cahill's Cons. Laws, 1923, c. 41, sec. 755.

quire that these advertisements must carry a statement of the amount paid for the space.[20] Michigan provides that the rate for space used for political advertising must not be higher than that charged for non-political advertising.[21] North Dakota permits only the legal rates for legal notices to be charged.[22] These provisions regulating the payment for advertising space are for the purpose of preventing the indirect purchase of newspaper support. If a political party or candidate is willing to pay more than the usual advertising rates, the influence of these excess payments may be felt in the news or editorial columns.

In the few cases in which the purchase of newspaper support has been the question at issue the courts have been outspoken in their condemnation of such a practice. It has been shown that Vermont has a statute forbidding the purchase of newspaper support. But before the passage of this act the Vermont Supreme Court had declared such purchase unlawful because it was contrary to public policy. The court said:

> A newspaper is understood to present the views of some one connected with its management or views deemed consistent with some settled policy, and has a patronage and influence which are due to that understanding. As long as the editorial column is relied upon as a public teacher and adviser, there can be no more dangerous deception than that resulting from the secret purchase of its favor. We hold that the contract . . . is contrary to public policy, and therefore void.[23]

[20] Minnesota, Gen. Stats., 1913, sec. 568; New Hampshire, Laws, 1915, c. 169, sec. 6; Wisconsin, Stats., 1917, c. 12, sec. 14.

[21] Pub. Acts, 1909, no. 281, sec. 48.

[22] Comp. Laws, 1913, sec. 938.

[23] Livingston *v.* Page, 74 Vt. 356, 1902. Cf. King *v.* Railroad Co., 147 N. C. 263, 1908.

In an Ohio local option election a wet organization agreed to do a certain amount of advertising in a newspaper with the understanding that the paper would remain neutral during the campaign. The state court of appeals held that this contract was void as against public policy and that it was also a violation of that section of the corrupt-practices act which specified for what purposes legitimate expenditures might be made. In stating this opinion, the court said:

> The newspaper is an important factor in molding public opinion. Its patronage largely depends upon its advocacy of policies sanctioned by its readers. By reason of its high position in our political economy its views on questions of private and public morality are stamped upon the individual. Often it does the latter's thinking, and very often its editorial policies find expression in the voter's ballot. The public policy, therefore, would require that its conscience could not be subject to barter, especially on those questions affecting the electorate. Buying its neutrality on election issues is as reprehensible as a purchase of its active editorial policy.[24]

While these laws prohibiting the purchase of newspaper support are very praiseworthy, they do not reach the problem of the influencing of voters by papers owned by candidates, by members of political committees, or by men who are very active in their support of particular issues or candidates. This problem is becoming more important with the rise of large-scale newspaper ownership, as, for example, the ownership by Mr. Hearst of newspapers in a large number of cities. Certainly, in the case of newspapers owned by candidates, members of party committees, and men like Mr. Hearst, no unbiased expression of political opinion may be expected. This presents a problem for which there is

[24] Miller *v.* Glockner, 1 Ohio App. 149, 1913.

apparently no solution. Few would favor any attempt to prevent a full expression of political views by newspaper owners, and any attempt at prevention would doubtless be unconstitutional. Only a few states have made any attempt to regulate this kind of influence on political opinion. With the idea of giving publicity to such ownership, Minnesota and Wisconsin require a statement of the ownership and control of any newspaper by a candidate or party committee to be filed with a state official.[25] To give other candidates an opportunity to answer attacks, it is provided in Florida that if newspapers publish an attack on a candidate equal free space must be granted this candidate for a reply.[26] But except for these few minor regulations, such newspapers are free to exercise whatever influence they may have on the voters.

Quite a number of states have gone further than the mere regulation of campaign literature. They have made the interesting experiment of having the state print and circulate pamphlets setting forth the varying views on issues and candidates. This experiment was begun in Oregon in connection with the initiative and referendum.[27] Eleven other states have followed Oregon in providing for the public printing of pamphlets containing arguments in relation to measures arising under the initiative and referendum.[28] All costs of publicity pam-

[25] Minnesota, Gen. Stats., 1913, sec. 569; Wisconsin, Stats., 1917, c. 12, sec. 14.

[26] Comp. Laws, 1914, sec. 3841 vv.

[27] Laws, 1907, c. 226.

[28] Arizona, Laws, 1912, c. 71, sec. 7; California, Stats. and Amdts., 1909, p. 254; Colorado, Laws, 1913, p. 313; Massachusetts, Gen'l. Laws, 1921, c. 54, sec. 53; Montana, Laws, 1907, c. 62, sec. 7; Nebraska, Laws, 1913, p. 494; North Dakota, Laws, 1918, c. 88; Ohio, Gen. Code, sec. 5018; Oklahoma, Laws, 1908, p. 447; Utah, Laws, 1917, p. 188; Washington, Laws, 1913, p. 431.

phlets are met by the state in Oklahoma, California, Washington, Ohio, and Massachusetts. In the other states costs are divided, the state usually paying for distribution, the persons or groups submitting arguments paying for the paper and cost of printing. North Dakota charges a fee of two hundred dollars per page.

Probably as an outgrowth of the above type of publicity-pamphlets seven states have applied the same idea to the ordinary primaries and elections. It is interesting to note, however, that a number of these laws providing for this latter type of publicity pamphlets have been repealed.[29] Under these laws committees and candidates may furnish the Secretary of State material which will be published upon certain specified payments. Rates for space vary with the office for which the candidate is running. Under the Wyoming statute candidates for United States Senator paid two hundred dollars for the first page; candidates for representative in Congress and for governor, one hundred and fifty dollars; for other state offices, one hundred dollars. Three additional pages could be secured by each candidate on payment of one hundred dollars a page. Political parties could secure space for fifty dollars a page. These pamphlets were to be mailed by the Secretary of State to each voter in the state.

Publicity pamphlets of both the forms described were advocated originally as a very desirable addition to the existing means of educating the electorate. It

[29] Colorado, Laws, 1913, p. 313; Florida, Acts, 1913, sec. 29; Montana, Rev. Code, 1915, p. 978 (repealed 1919); North Dakota, Comp. Laws, 1913, sec. 924; Oregon, Laws, 1909, c. 3; South Dakota, Laws, 1917, c. 234, sec. 49 (repealed 1921.); Wyoming, Laws, 1911, c. 41, sec. 17 (repealed 1919). The Colorado law was enacted subject to the repeal of a constitutional provision in conflict with it. The repeal has not been accomplished.

was argued that they would give poor men a more equal chance in contests with wealthy men. In practice the pamphlets providing publicity for measures have been used more widely and with greater success than the ones providing publicity for candidates. The pamphlets dealing with measures are believed, on the whole, to be of material help in arousing the interest and informing the intelligence of the voters. It has been shown that at the present time only three of the statutes providing publicity pamphlets for candidates are in effect. In Wyoming during the eight years this law was on the statute books not a candidate took advantage of its provisions. Oregon appears to be the only state in which these pamphlets have been much of a success.[30]

To furnish further publicity for the policies and issues advocated by candidates a few of the Northwestern states provide for the placing of a brief statement of such policies and issues on the ballots. The South Dakota statute provides that "The representative paramount issue shall be expressed in not more than eight words as a summary for the heading of the appropriate column on the ballot."[31] In Oregon twelve words stating the measures he especially advocates are to be placed on the ballots opposite the candidate's name.[32] It is apparent that little beneficial results can be expected from the placing of a few campaign slogans on the ballot,[33] and, of course, with the long ballot generally used, it is out of the question to allow more to go on it.

[30] For a very able discussion of publicity pamphlets, see, R. C. Brooks, *Political Parties and Electoral Problems,* pp. 348-50, and 473-6.
[31] Laws 1917, c. 234.
[32] Laws 1920, c. 3979.
[33] Brooks, op. cit., p. 406, presents a few of these slogans.

The statements to the voters, moreover, should be made before they go into the polling places.

Legislation regulating the use of political advertising is still in its infancy except for the provisions requiring that advertisements be designated as such and requiring some one to assume responsibility for such advertisements. It has been shown that the statutes prohibiting the purchase of newspaper support are probably unnecessary, for in several cases courts have declared such purchase contrary to public policy, without there being a specific statute to that effect. But, in general, the theory of the regulation of political advertising has not been stated by the judiciary. Is such regulation based on the public interest attached to a newspaper? Certain statements in the opinions declaring the purchase of newspaper support contrary to public policy tend toward such a theory.[34] The Massachusetts Supreme Court, on the other hand, has recently decided that a newspaper is not so affected with a public interest as to be required to publish the findings of the state Minimum Wage Board.[35] The court, however, stated that there might be circumstances under which newspapers might be held to be clothed with a public interest. In at least one case the Associated Press has been held to be affected with a public interest on the grounds that most newspapers are dependent on it for news and that the publication of this news is of vast importance to the public.[36] Might it not also be said that the individual reader is dependent on the newspaper for news and that

[34] See pp. 97-98 above.

[35] Commonwealth *v.* Boston Transcript Co., 249 Mass. 477, 1924.

[36] Inter-Ocean Publishing Co. *v.* Associated Press, 184 Ill. 438, 1900.

the way it is presented to him is of such importance that the newspaper is affected with a public interest?

Regardless, however, of the question of public interest, regulation of campaign literature can be upheld as a part of the general regulations of elections. If the courts declare the purchase of newspaper support illegal because it is opposed to public policy, they should equally uphold statutory regulation of advertising and other forms of written appeals to the voters under the constitutional provisions empowering the legislatures to regulate elections, or even under the general police power of the state.

The experiments of the states with state-published pamphlets setting forth the claims of candidates and parties have not proved successful. Appeals for support will continue to be made through various forms of campaign literature, and it is very certain that these appeals will continue to be made the subject of legislative regulation. It is impossible, however, to regulate effectively unfair editorial comment and biased news items, and, as in the past, suit for libel will offer the only check on this form of political discussion.

CHAPTER V

STATE REGULATION OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

DESPITE the stringent legislation against abuses of the elective franchise which has been described in the preceding chapters, the worst evils seem not to have been corrected. Beginning about 1890 stories of fraud and corruption at elections became more and more numerous. This, undoubtedly, was to some extent due to the greater interest taken in such matters, to a somewhat higher standard for public conduct, and to the larger circulation of newspapers and magazines. It is also true, however, that with the increase in the size of the country and its rapid industrial and commercial expansion there came a greater temptation to purchase elections outright. Some of the petty election abuses—buying or intimidating individual voters, stuffing the ballot-box, and the fraudulent count of votes—probably have diminished. The United States of the present day runs its affairs on a larger scale. It is not efficient to buy votes one at a time when by making a deal with a party machine thousands of votes can be much more easily controlled. The operation of these large political organizations requires the expenditure of enormous sums of money. Naturally, these organizations seek the sources where the money may be obtained. These are usually the large financial and industrial concerns that are subject to legislative or other official action. The result is that legislation is at least influenced by the men who supply the money for the campaign expenses of these

political organizations. It is seldom that money is paid directly to the public officials to influence them. This would be needless, for their actions can more easily be controlled through payments to the boss of the political machine. Albert Stickney in *Organized Democracy* points out that with the political parties dominated by bosses it is much easier for those seeking to influence governmental action to make arrangements with the bosses than to attempt to control elections by bribing the individual voters. He says:

> We give ourselves much alarm over the occasional purchase of a few individual votes. But what are we to say of the purchase, in effect, of votes by the hundred thousand—by the million? Yet that is what is actually accomplished, when men purchase the influence of the powerful machine politicians. Single politicians, or single groups of politicians, who control the selection of our highest public officials, practically buy and sell the votes of us citizens by the hundreds of thousands and the millions. Under such circumstances, it is childish and trifling for us to consider the matter of buying and selling a few individual votes.[1]

It might be raised in objection to Mr. Stickney that political leadership, which necessarily influences large numbers of votes, must be present in a democracy if any political decisions are to be reached. To supply this leadership in the United States the machine politician may be necessary. But certainly every attempt should be made to prevent his selling the election.

The apparently necessary and legitimate expenses of every campaign are enormous. Great numbers of stenographers, clerks, bill-posters, and distributors of campaign literature are employed. Payments for adver-

[1] P. 18.

tising and for campaign speakers run into the thousands of dollars. Bills for stationery, postage, flags, badges, and fireworks must be met. These campaign expenses, state and national, in an exciting election amount to many millions of dollars. When these sums are added to our other costs of government it can more readily be seen how expensive our form of government is. Henry Jones Ford says:

> It is a fond delusion of the people that our republican form of government is less expensive than the monarchical forms which obtain in Europe. The truth is that ours is the costliest government in the world. . . . Turn the matter about as one will, it is inevitable that these costs of parties must be paid. Our present method of paying them is indirect, furtive, fraught with grave moral consequences, and it is tremendously extravagant. We do not see the latter point clearly because we seldom get an insight into the total amount demanded or into the many and devious ways by which it is collected.[2]

It is doubtful if the question of regulating campaign funds would ever have been raised if party contributions were habitually made by a large number of persons, each giving a relatively small amount. If this plan were followed, the campaign funds would probably be smaller in amount, lessening the possibility of gross frauds, and on the other hand the belief that the government is run in the interest of the large contributors would not have arisen. It is not so much the campaign contribution itself that has fallen into disrepute as the secrecy involving the whole subject and the belief that large contributions have been repaid by corrupt favors. Mr. W. E. Weyl has written:

> To democratize industry and politics, we must, among other things, democratize the political party; to democratize the

[2] *The Rise and Growth of American Politics* (The Macmillan Co.), p. 323.

political party, we must, among other things, control its purse. Here, as elsewhere, he who pays the piper, calls the tune. Your campaign contributor may be never so public spirited, your party treasurer may be never so scrupulous, and yet when the need of money is urgent, much is understood that is not written down. . . . What we most fear is not so much the campaign gift which buys the way to an ambassadorship or a cabinet seat, as the effect upon platforms and nominations of the anticipated need of securing funds from a few wealthy men. . . . Political parties have been too long run upon the model of the free circus, with the result that millions of men who would not accept a free meal or a box of cigars from a charitable neighbor, allow their most vital political prerogative —their right to vote—to be subsidized by a group of wealthy strangers.[3]

The recognition of the evils arising from the lavish use of money at elections is not confined to the reformer or publicist. Such an active party man as Mr. Elihu Root has spoken against it in no uncertain terms.

The use of money has come to such a pass at the hands of both the great political parties in this country that we find enormous contributions necessary to maintain party machinery, and to conduct party warfare, and the fact is that great moneyed interests, corporate and personal, are exerting yearly more and more undue influence in political affairs. Great moneyed interests are becoming more and more necessary to the support of political parties, and political parties are every year contracting greater debts to the men who can furnish the money to perform the necessary functions of party warfare.[4]

Congress and many state legislatures have forbidden campaign contributions by corporations. Before these laws were passed the corporations were probably the largest single source of revenue for the party organiza-

[3] W. E. Weyl, "Democratization of Party Finances." *Proceedings Amer. Polit. Sci. Asso.*, 9 (1912), 178-82, passim.

[4] *Revised Records New York Constitutional Convention, 1894*, 3, 877.

tions, and even after the passage of such laws the officers of corporations as individuals may make contributions which to all intents and purposes are contributions of the corporation. The majority of these gifts are not determined by political sentiments, principles, or party loyalty. They are usually considered as necessary expenses of the business. The corporations receive their rewards in governmental favors and special privileges. The party machine at times has made corporations pay heavily for permits and privileges to which they were fairly entitled. The corporations found it easier to pay than to go to law, or more comfortable to pay than to be exposed for what they had already done. Mr. J. F. Carr tells of an interesting conversation with an official of a small railroad entering New York City. The official said his company made a practice of sending five thousand dollars to Tammany at the beginning of each campaign. "We often have to ask for favors," he said, "and it puts us on a friendly footing with influential people in the Hall."[5]

The New York Legislative Insurance Investigating Committee of 1905 brought out some very interesting evidence in regard to political contributions made by this class of corporations. Officers of the Equitable, New York Life, Mutual, and other insurance companies testified it was their custom to make such contributions. Mr. Hyde, of the Equitable, when questioned concerning a contribution by his company of fifty thousand dollars to the Republican fund in 1904, said the contribution was made because "It was to the best interests of the Equitable and the best protection

[5] J. F. Carr, "Campaign Funds and Campaign Scandals," *Outlook*, 81 (1905), 549.

of the Society's assets that the Republican party should be reëlected. . . . Other life insurance companies and a great many other large corporations also considered this wise."[6] Mr. Perkins, of the New York Life, thought this practice very bad and that there should be full publicity for all campaign contributions. But at the same time he thought "There might easily arise a situation, as in the McKinley campaign, where we ought to contribute money that would be 25 cents, 50 cents, a dollar, or 10 cents from each policy-holder to protect his interests."[7] Mr. McCall, of the New York Life, said: "I don't justify the use of money for campaign purposes. I justify the use of these funds in the protection of the policy-holder's interests. I don't care about the Republican side of it, or the Democratic side of it. . . . What is best for the New York Life is what moves and actuates me."[8]

The Committee in its report said:

The testimony taken by the Committee makes it abundantly clear that the large insurance companies systematically attempted to control legislation in this and other states, directly or indirectly, which could effect their interests. . . . These efforts involved the expenditure of large sums. Considerable amounts charged to legal expenses, and the payment of which was authorized by executive officers were paid out on vouchers which failed to disclose with any suitable particularity the consideration for the payments. . . . It is apparent that contributions . . . for use in State Campaigns were made with the idea that they would be protected in matters of legislation. Senator Platt, to whom the contributions were made, testified

[6] *Testimony Taken Before the Joint Committee of the Senate and Assembly of the State of New York to Investigate and Examine into the Business and Affairs of Life Insurance Companies Doing Business in the State of New York* (Armstrong Committee), 1905, p. 2916.

[7] Ibid., p. 761.

[8] Ibid., p. 840.

that it was supposed that an advantage would be derived through his relation to the State Committee and that he would be ready to respond to an appeal for assistance in case hostile measures were threatened; in short, that the use of the contributed moneys in the election of candidates to office would place them under more or less of an implied obligation not to attack the interests supporting them.[9]

The Committee recommended that contributions by insurance corporations for political purposes should be strictly forbidden.

Whether made for the purpose of supporting political views or with the desire to obtain protection for the corporation, these contributions have been wholly unjustifiable. In the one case executive officers have sought to impose their political views upon a constituency of divergent convictions, and in the other they have been guilty of a serious offense against public morals.[10]

That the practice of receiving political contributions from corporations by the party boss was a long standing one is shown in a statement of Thurlow Weed. When it was charged that certain city railroad bills had been passed through an agreement by which the lobby gave Weed funds for the presidential campaign, Weed confessed:

Obnoxious as the admission is to a just sense of right and to a better condition of political ethics, we stand so far "impeached." We would have preferred not to disclose to public view the financial history of political life. . . . Public men know much of what "the rest of mankind" are ignorant. We suppose that it is generally understood that party organizations cost money and that presidential elections especially are expensive. . . . It has been our duty and task for nearly forty years to raise money for elections. Believing that railroads

[9] Ibid., p. 23.
[10] Ibid., p. 397.

were essential to the City of New York, and that legislative grants for them would be obtained, we conceived and attempted to carry out the idea of making these grants available politically.[11]

It is interesting to note that the charge that his backers had procured a campaign fund of from four to six hundred thousand dollars by the corrupt granting of franchises for street railways in New York City seriously damaged Seward's candidacy in the Republican national convention of 1860.[12]

Gifts are often made to both parties by the same person or corporation. These donors calculate closely the power of any group of politicians to help or injure them. By contributing to both sides they will secure protection regardless of election results. Boss Smith of New Jersey said that when his state was in the doubtful column the Pennsylvania Railroad had contributed to both parties, but after Bryan's overwhelming defeat in 1896, funds were no longer supplied to the Democrats.[13] Mr. H. H. Vreeland, a prominent financier in New York City, testified before a grand jury in 1908 that five years before on behalf of a certain corporation he had contributed twenty thousand dollars to Mr. Odell, Chairman of the Republican State Committee, and sixteen thousand, five hundred dollars to Mr. Murphy, leader of Tammany Hall.[14] Senator La Follette states that in 1888, while he was a member of the lower

[11] *Albany Evening Journal,* Sept. 21, 1861. Quoted in S. D. Brummer, *Political History of New York State During the Period of the Civil War,* p. 23.

[12] J. F. Rhodes, *History of the United States from the Compromise of 1850,* 2, 462. Cf. R. C. Brooks, *Political Parties and Electoral Problems,* p. 329 note.

[13] J. F. Carr, "Campaign Funds and Campaign Scandals," *Outlook,* 81 (1905), 549.

[14] J. A. Woodburn, *Political Parties and Party Problems,* p. 406.

house of Congress, he was told that if the Nicaraguan Canal Bill passed during that session of Congress the parties interested in the canal would contribute $100,000 to both the Democratic and Republican campaign funds.[15] During the campaign of 1924 Mr. Sinclair and Mr. Doheny testified that they had contributed to the campaign funds of each of the large parties.[16] It was brought out by the Reed Committee during its investigation of the Illinois primary of 1926 that Mr. Samuel Insull, the Illinois public utility magnate, had contributed $125,000 to Mr. Frank L. Smith's campaign fund and had expended over $30,000 additional for propaganda against the entrance of the United States into the World Court, an expenditure which aided Mr. Smith's candidacy for the Republican nomination for United States Senator. Mr. Insull also contributed $10,000 to the Deneen faction of the Republican party. The Deneen faction was supporting Senator McKinley, Mr. Smith's rival, for the Republican nomination for Senator. It is interesting to note that Senator McKinley had previously voted for the entry of the United States into the World Court. In addition to these contributions to the rival candidates for the Republican nomination, Mr. Insull contributed $15,000 to aid the Chicago Democratic boss, Mr. George E. Brennan, in his campaign for the Democratic nomination for Senator.[17]

In 1894 before a Senate Committee of the Fifty-third Congress, the officers of the Sugar Trust gave some noteworthy evidence concerning their attitude

[15] La Follette's *Autobiography*, pp. 78-80.

[16] *Hearings before the Senatorial Committee Investigating the Naval Oil Reserve Leases*, Sen. Rep. 794, 68th. Cong., 1st. Sess. 1924, passim.

[17] Report of Reed Committee, op. cit., pp. 1572-3, 1628, 1811-32.

toward political contributions. President Havemeyer was asked if his corporation felt at liberty to contribute to both parties. He replied:

> That depends. In the State of New York, where the Democratic majority is between 40,000 and 50,000 we throw it their way. In Massachusetts, where the Republican party is doubtful, they probably have the call. . . . It is my impression that wherever there is a dominant party, wherever the majority is very large, that is the party that gets the contribution, because that is the party that controls the local matters.

He then agreed that in a Democratic State the Sugar Trust was Democratic, and in a Republican State, Republican.[18] Treasurer Searles stated that:

> I have always understood for many years that it is the custom of both parties to solicit from corporations and individuals contributions for the carrying on of their political campaigns, and that it is the custom of corporations and individuals to respond to such invitations.

He was asked if he considered such contributions proper. His reply was: "I think as parties are now managed that it is proper."[19]

Contributions collected by the police from the various classes subject to police regulations have added large sums to the treasuries of the political machines. These contributions are made as a form of insurance against too vigilant police inspection. The most startling exposure of these contributions was made by the Lexow Committee of the New York legislature in 1895. This committee found that practically all businesses,

[18] Senate Report, no. 485, 53rd. Cong., 2nd. Sess., p. 3, 1894.
[19] Ibid., p. 8. Cf. C. A. Beard, *Readings in American Government and Politics*, pp. 572-7.

legitimate or illegitimate, were forced to submit to the police levy. The system had reached such perfection that the inmates of houses of prostitution were numbered and classified and a charge placed upon each proprietor in proportion to the number of inmates, the number of rooms occupied, or the prices charged. The police levy on these houses ran from $25 to $50 a month, depending on the above considerations. A fee of $500 was charged for the opening of new houses. The city was divided into zones, and gambling privileges in the various zones were sold. Pool rooms paid at the rate of $300 a month. Liquor dealers were assessed for the privilege of keeping open at forbidden hours, or for doing other things not permitted by law. Pawnbrokers, thieves, abortionists, and all classes engaged in doubtful businesses were assessed. It was also proved that boot-blacks, push-cart and fruit venders, keepers of soda-water stands, and grocerymen paid the levy to keep from being constantly arrested for violation of some forgotten petty city ordinance. Builders who were compelled at times to use the sidewalks and streets in their building operations had to pay for the privilege. Steamboat companies had to pay for the police protection on their docks. All of this tribute, of course, did not reach the campaign chests. Much was kept by the various men through whose hands it passed. A position on the police force was highly prized. The Lexow Committee found that there were regular brokers engaged in the traffic of securing police appointments at the average cost of $300 a piece. One police captain testified that he had paid $15,000 for his pro-

motion. Another admitted that his captaincy had cost $20,000.[20]

Candidates are expected to contribute liberally to the party funds. In many cases the toll levied is so heavy that none but the rich can afford to run for office. A common assessment in Illinois was said to be five per cent of the annual salary of the office to which the candidate was aspiring.[21] Mr. J. B. Bishop gives what he claims to be a true statement of the assessment schedule for candidates on the Tammany ticket. Candidates for mayor pay from twenty-five to thirty thousand dollars; candidates for supreme court judge from ten to twenty thousand; for register, from fifteen to forty thousand. Other candidates pay in proportion to these assessments.[22] The Mazet Committee of the New York legislature made a thorough investigation of the assessment of candidates for judicial positions. A number of judges testified that it was the general custom for candidates for the various courts to pay from $5,000 to $15,000 into the campaign funds.[23] Boss Croker testified that the amount of these assessments was settled between the candidate and the leader of his district.[24]

[20] *Report and Proceedings of the Senate Committee Appointed to Investigate the Police Department of the City of New York* (Lexow Committee), (Albany, 1895), pp. 33-48. Cf. J. B. Leavitt, "The Criminal Degredation of New York Citizenship," in the *Forum*, 17 (1894), 661; Beard, op. cit., p. 505; Gustavus Myers, *History of Tammany Hall*, esp. pp. 275-8; "The Rosenthal Murder and Police Graft," in the *Outlook*, 101 (1912), 795.

[21] J. W. Jenks, "Money in Practical Politics," in the *Century*, 44 (1892), 940.

[22] J. B. Bishop, *Money in City Elections*, p. 1.

[23] *Report of the Special Committee of the Assembly Appointed to Investigate the Public Offices and Departments of the City of New York and of the Counties Therein Included* (Mazet Committee) (1900), pp. 3542-8.

[24] Ibid., pp. 342-3. Cf. J. A. Woodburn, *Political Parties and Party Problems in the United States*, pp. 397-404.

The attitude of the ward leader toward the assessment of candidates is set forth in *Plunkitt of Tammany Hall.*

> The sums they pay are accordin' to their salaries and the length of their terms of office, if elected. Even candidates for the Supreme Court have to fall in line. A Supreme Court Judge in New York County gets $17,500 a year, and he's expected when nominated to help along the good cause with a year's salary. Why not? He has fourteen years on the bench ahead of him, and ten thousand other lawyers would be willin' to put up twice as much to be in his shoes. Now, I ain't saying that we sell nominations. That's a different thing altogether. . . . The man is picked out and somehow he gets to understand what's expected of him in the way of a contribution, and he ponies up—all from gratitude to the organization that honored him.[25]

Another rich source of party revenue has been collections from office holders. The party considers that such men are holding office because of the good will of the party, and, naturally, they should not object to making subscriptions to help keep themselves in office. Assessments on office holders appeared in national politics simultaneously with the spoils system. In 1830 the men appointed by Jackson to offices in Boston were asked to contribute to a fund for the payment of the debts incurred by the editor of the *Statesman* during the campaign of 1828. By 1840 a regular system of assessments existed in some places. In New York officials in the custom house were all assessed, just previous to the various elections, for sums differing according to their salaries. Throughout the forties, fifties, and sixties this unofficial taxation was the accepted rule.[26] Writing in 1882, Mr. D. B. Eaton says that in a period of less

[25] Pp. 136-8.
[26] C. R. Fish, *The Civil Service and Patronage,* p. 180.

than five years before 1871 there were 1,678 removals in the New York Custom House to enforce assessments or otherwise to gratify partisan feelings.[27] He also says that from $2,000,000 to three or four times that sum may be accepted as the amount of the annual assessments in New York.[28] Assessment of office holders is not confined to an earlier period in our history. Writing in 1905, Mr. J. F. Carr states that in the recent campaign the Chairman of the Iowa Republican State Committee sent a letter to each Iowan in government employment at Washington requesting what he called "the surrender of an equitable part of your salary you are receiving from the government." This equitable part was defined as three per cent of the yearly salary.[29]

A most illuminating account of assessments on office holders is contained in a report on the political assessments of office holders in Philadelphia drawn up by a former director of the department of public works of that city. In this report it is stated that

> In no single year in the last ten years has the amount contributed directly by office holders to the Republican campaign funds been less than a quarter of a million dollars, which amount was the sum raised in 1911. . . . During the previous year, 1910, almost half a million was so collected, and even ten years ago, or in 1903, the figures approximated $350,000.[30]

Estimates of the assessments for each year from 1903 to 1913 are given, showing a grand total for that period of $4,088,367.74.[31] The assessment rate given shows

[27] "Political Assessments," in the *North American Review,* 135 (1882), 198.
[28] Ibid., p. 208.
[29] "Campaign Funds and Campaign Scandals," in the *Outlook,* 81 (1905), p. 549.
[30] M. L. Cooke, *The Political Assessment of Office Holders* (1913), p. 3.
[31] Ibid., p. 5.

that those with salaries below $900 were assessed three per cent; with salaries from $1,000 to $1,900, four and one-half per cent; $2,000 to $2,900, six per cent; $3,000 to $5,900, nine per cent; $6,000 and over, twelve per cent.[32] Ninety-four per cent of all city employees are shown to have paid these assessments.[33] These assessments were levied despite the fact that it was illegal in Pennsylvania to solicit political contributions from public employees.

Contractors, hoping to insure the election of friends who will be in a position to award lucrative contracts, often contribute generously to the party funds. Through corrupt agreements between public officials and contractors these contributions have at times degenerated into outright stealing from the taxpayers. Many illustrations of these raids on the public treasury by the Tweed ring have appeared. This ring undertook the erection of a county court house. It actually cost $3,000,000; the city's books showed $11,000,000. A plasterer appeared on the books as having earned $2,870,464.06 in nine months time.[34] In 1871, $7,168,312.23 was charged to advertising, the greater part of this sum having been paid to the New York Printing Company, an establishment owned by members of the Tweed ring.[35] It is estimated that during the period of Tweed's control of New York City the total loss to the city through fraudulent contracts, fraudulent bonds,

[32] Ibid., p. 9.

[33] Ibid., p. 8. For an interesting account of the methods used by Tammany Hall to collect from office holders see *Plunkitt of Tammany Hall*, pp. 138-40.

[34] R. B. Fosdick, "The Police Scandal and the Good Old Days," in the *Outlook*, 102 (1912), 346.

[35] A. B. Paine, *Th. Nast, His Period and His Pictures*, p. 175.

swindling by wealthy tax dodgers, and the sale of franchises and favors, was around $200,000,000.[36]

While the use of fraudulent contracts to gain funds for the political machine and for its individual members probably reached its height under the Tweed regime, such methods have been used elsewhere. The State Capitol building at Albany was made to cost $25,000,000 when nothing like this value was received by the state. Similar graft was present in the construction of the State Capitol of Pennsylvania for the benefit of the Quay Machine.[37] In a few cases, such as that of the contractor combine of Philadelphia, the bosses themselves go openly into the contracting business on a large scale. The Philadelphia *Public Ledger* of October 17, 1922, estimated the value of public contracts awarded to Senator Vare up to 1921 at about $20,000,000. The McNichol machine was also credited with getting its full share of contracts.[38]

Even the most stringent enforcement of the most comprehensive laws against bribery, intimidation, and fraud could not free elections from the control of those who had such tremendous sums to spend for campaign purposes. Demand arose for legislation specifying the sources from which funds could be collected and determining how they might be expended. To make such laws effective, statements of all receipts and expenditures must be made public. Mr. Perry Belmont, one of the leading advocates of this form of legislation, has stated its nature and purpose, as follows:

[36] Ibid., p. 177.

[37] J. A. Woodburn, *Political Parties and Party Problems*, p. 398.

[38] R. C. Brooks, *Political Parties and Electoral Problems*, p. 203. Cf. James Bryce, *American Commonwealth*, chapters 88 and 89; A. L. Bishop, *Building and Operation of the State Works of Pennsylvania*, in *Yale Review*, 15, Old Series, (1907), 391.

The purport of legislation requiring publicity in campaign expenditures is to secure the freedom of elections from improper influences. To this end the indirect restraints of such acts are more effectual than the direct prohibitions and penalties of statutes penalizing bribery. The adequacy of existing laws to punish one proved guilty of bribery may be admitted as a general proposition. That specific legislation of this nature has not proved effective to protect the free exercise of the franchise from the undue influence of campaign expenditures must also be admitted. It is a crime which is not readily susceptible of direct proof. The remedy sought in the suggested legislation . . . is rather one of prevention by indirection. It is the limitation and regulation of the possible sources and agencies of corruption which is of primary practical importance. The chief inducement to bribery must be removed by throwing safeguards about the irresponsible use of campaign funds. The chief remedy proposed by such legislation is publicity, not purely police or penal regulation of the grosser forms of bribery.[39]

New York is the only state which had a law limiting the expenditure of campaign funds to certain specified objects prior to the last decade of the nineteenth century. A New York Act of 1829 made it unlawful for any candidate or other person to contribute money for any other election purpose than for defraying the expenses of printing, and the circulation of ballots, handbills, and other papers previous to any such election. Violation of the act was made a misdemeanor.[40]

In 1843 the New York Supreme Court was called on to construe this statute. Suit had been entered to recover one thousand dollars which had been promised the plaintiff for operating a log cabin in New York

[39] Perry Belmont, *Publicity of Election Expenditures.* Originally published in *North American Review,* Feb. 1905. Presented by Senator Tillman to the Senate and published as Sen. Doc. no. 89, 59th Cong., 1st Sess.

[40] New York Stats., 1829, c. 373.

City for the purpose of entertaining voters and influencing them to vote for General Harrison for President. The plaintiff was denied payment on the ground that the agreement was contrary to the statute of 1829. The court said:

It requires no argument to prove that this money was to be paid to promote the election of particular persons, to wit, General Harrison, and the Whig candidates for Congress. . . . The parties intended to accomplish the very thing which the statute declares to be illegal. . . . It is said that the statute only forbids the contribution of money for corrupt purposes. But the statute says nothing about corruption. It declares that the thing shall not be done. With two specified exceptions, it provided that money "intended to promote an election" shall not be contributed. The legislature evidently thought that the most effectual way "to preserve the purity of elections" was to keep them free from the contaminating influence of money. They said, you may contribute money to pay for printing and circulating votes and information, but not for any other purposes. If this contract is void, it is said that money cannot be contributed to hire a room for holding political meetings. That is undoubtedly true, if the object be "to promote an election of any particular person or ticket." I will not discuss the policy of the law. The legislature has said the thing shall not be done, and that is enough.[41]

By 1858, however, this court had relaxed its views considerably. It no longer construed the statute so literally as it had in 1843. During the campaign of 1856 a man had been hired to put up and take down a tent used for various Fremont meetings. He was refused payment for his services because of the provisions of the Act of 1829. In making its decision in this case, the court reviewed its former interpretation of the Act. It said:

[41] Jackson *v.* Walker, 5 Hill (N. Y.) 27, 1843.

This court decided in Jackson *v.* Walker that a contract to pay for the use of a log cabin to be used, and which was used, during an election canvass, to promote the success of a particular candidate or ticket, was within the prohibitions of the act in regard to penalties for misconduct at elections, and could not be enforced. The decision must be regarded as the law of this court, but it should not be extended beyond the circumstances out of which it arose; for, notwithstanding the acknowledged ability of the judge who delivered the opinion, it is hardly possible to reconcile it with the spirit or the letter of the statute of which it is an exposition.

The court then went on to give its new interpretation of the act. It decided that the legislature had not intended to prohibit all other expenditures than those mentioned in the statute. Payments for the use of a room in which to hold a political meeting, for the lights used, or for the attendance of a person to prepare the room and keep it in proper order were held not to be any more illegal than the payment by a particular individual of his own expenses of transportation in going to such a meeting. According to this new judicial interpretation the provisions of the act were intended only to prohibit contributions to a common fund to be used for election purposes and to prevent such funds being used "by unscrupulous men to demoralize and corrupt elections and to defeat the public will."[42] Whatever the intentions of the New York legislature were in passing this law, nothing is heard of it after 1858.

The present-day legislation in the United States limiting the amounts that may be expended at elections and providing for publicity for such expenditures had its beginning with the New York Act of 1890.[43] The

[42] Hurley *v.* Van Wagner, 28 Barbour (N. Y.) 109, 1858.
[43] Acts, 1890, c. 94.

Colorado and Michigan legislatures enacted somewhat similar statutes in 1891,[44] while Massachusetts passed a much more comprehensive act in 1892.[45] In the succeeding years state after state fell in line until today practically all of the states attempt to limit expenditures and to make public the amounts that are spent.

The English Corrupt-Practices Act of 1883 serves as a standard which the American laws have more or less closely followed. The English Act recognizes three general classes of election offenses: corrupt practices, illegal practices, and illegal payments. Treating, undue influence, bribery, impersonation, and aiding or counselling such offenses are termed corrupt practices. The following are specified as illegal practices: conveyance of electors to or from the polls, publishing false statements of the withdrawal of a candidate, publishing posters not carrying names of the printer and publisher, failure to make proper declaration concerning election expenses, payment of any expenses more than twenty-eight days after the candidate is declared elected, making false statements concerning the character or conduct of a candidate. The following payments are made illegal: payments to an elector for use of land or buildings for posting notices or on account of exhibition of such notices, unless this is the business of the elector; for any committee rooms in excess of the number set down in the Act; expenses in excess of the maximum amount allowed by the Act; payments to influence a candidate to withdraw; payments for bands, torches, flags, banners or other marks of distinction.

[44] Colorado, Laws, 1891, p. 167. Michigan, Pub. Acts 1891, no. 190.
[45] Acts of 1892, c. 416.

In addition to providing the above offenses, the law names the purposes for which money may be legally spent. These are: personal expenses of the candidate; expenses of printing and advertising; issuing and distributing addresses and notices; expenses of stationery, messages, postage and telegrams; holding public meetings; expenses of one committee room for each 500 voters. The number of persons who may be employed by the candidate is strictly limited, and paid election workers are not allowed to vote.

The maximum expenditure in each parliamentary district is determined by the number of voters. In boroughs where the voting population is less than 2,000, the maximum is fixed at 350 pounds; for each additional 1,000 voters, 30 pounds may be spent. In a county with less than 2,000 voters 650 pounds may be spent; for each additional 1,000 voters, 60 pounds extra expenditure is allowed.

Each candidate must appoint an election agent. All money must be received by and paid through this agent, except that the candidate may pay his personal expenses to an amount not exceeding one hundred pounds. Bills of forty shillings and over must be vouched for by a bill stating particulars of the expenditure and by a receipt. A statement of the election expenses is required to be filed with the proper public officer within thirty-five days after the election, and a summary of this statement must be published in two newspapers in the county or borough where the election has taken place.[46]

The English Act is most comprehensive in its provisions and minute in its details, but it must be noted

[46] English Corrupt-Practices Act of 1883, 46 and 47 Vic., c. 51.

that it only applies to parliamentary elections. Because of the vastly dissimilar conditions at American elections, the state legislatures, although following the idea of the English Act, found it impossible to adopt this Act in anything like its entirety. To control by law a candidate for parliament who personally or by his agent manages his own campaign, and whose canvass is distinct by itself is a comparatively simple matter. To deal with a dozen or more candidates, all running for office at the same time on a party ticket and voted for within the same election district, none of whom may have anything to do with the actual conduct of the campaign, is a task of much greater complexity, and the states found it must be taken up in a different way.

The provisions of the English Act dealing with bribery, fraud, intimidation, and other glaring election abuses were already on the American statute books, but the New York Act of 1890 marked the real beginning of the attempt to limit expenditures and to provide publicity for them. This Act was very feeble in its attempted regulation. It applied only to candidates, prohibiting them from expending money for certain purposes and requiring from them a statement of expenditures. Since a far greater amount of money is spent through the political committees, it is obvious such regulation would be almost worthless. There was no provision for a statement of campaign contributions. Mr. J. B. Bishop, in writing of this Act, said:

> The result is . . . that the candidates give a few unimportant items of expenditures made by themselves, and then name the sums which they have contributed to the campaign committees. What the committees have done with the money nobody knows. All that the public gains by the law is a more or less accurate

idea of the amount of money which candidates for office are in the habit of paying as assessments, or as rewards for the honor of the nomination. Whether the returns be strictly honest depends upon the conscience of the candidate.[47]

The Massachusetts Act of 1892 applied to committees as well as to candidates. Every political committee was required to have a treasurer, who must, within thirty days after the election, file a sworn statement setting forth all the receipts, disbursements, and liabilities of the committee. A voucher for every payment of over five dollars was required to be kept. The Act applied to every individual, not acting under a committee, in a similar way. Thus the whole matter of political expenditures by whomsoever made was intended to be brought within the scope of the law. Candidates were allowed to make voluntary subscriptions to political committees, but the committees were forbidden to solicit from them. Upon the petition of any candidate or of five qualified voters, the superior courts were given full equity power to compel any person failing to file the required statement, or filing one not meeting the provisions of the Act, to file a correct and proper statement.[48] This Act enabled the public to secure a fairly close estimate of the amounts being spent during political campaigns, and it seems to have worked with a reasonable degree of efficiency. One serious loophole was found, however. Contributors were able to conceal their identity by sending their gifts to the National Committees and having them sent back to the state committees. These gifts were credited in the returns to the

[47] J. B. Bishop, "Insufficient Restrictions of Campaign Expenditures," in the *Forum*, 15 (1893), p. 148.
[48] Mass. Acts of 1892, c. 416.

National Committee.[49] This abuse was partially remedied by the Federal Act of 1910 requiring publicity of contributions made to committees operating in more than one state.

The most common restriction on the source of campaign funds is the prohibition of contributions by corporations. It is believed that in most instances contributions are made by corporations, not because of interest in the welfare of a particular party, but for the purpose of securing special favors. Since the corporation is the creature of the state, with the purpose of its existence stated in its articles of incorporation, the state is at perfect liberty to forbid it doing a thing which is not mentioned in its charter. This is especially true when it is felt that the creature of the state is performing an act held to be inimical to the interests of the state. With this idea in mind, thirty-six states have in differing degrees regulated campaign contributions by corporations.[50] The laws of twenty-seven states prohibit contributions by every corporation. The legislatures of the other nine states have applied the prohibition to certain classes of corporations. Louisiana and Montana forbid public service corporations to contribute. The Nevada law includes banking and public service corporations. New Jersey extends the prohibition to banking, public service, and insurance companies. Kentucky excludes all public service corporations' contributions, and makes it unlawful for any corporation to contribute to the election of any official whose duties apply specifically to such corporation. Oregon forbids contributions from any corporation having the right to condemn

[49] J. B. Bishop, op. cit., p. 150.
[50] Table 5, Column 1.

land. North Carolina permits contributions from any corporation except insurance companies. Alabama and Kansas enumerate specifically a number of kinds of corporations which may not contribute. This enumeration includes banks, insurance, railroad, street railway, telephone, telegraph, gas, and electric light corporations, and any company having the right to condemn land or to exercise public franchise.[51]

In a few cases the state laws prohibiting contributions by corporations have been contested. A Michigan brewing company insisted that it was being unconstitutionally deprived of a property right by being denied the privilege of contributing to a local option election. The state supreme court said:

> The expenditure of the money of the Lansing Brewing Company for election purposes cannot be deemed a property right within the meaning of the Constitution. Such corporations have no right to participate in the elective franchise. . . . The Lansing Brewing Company was created under our statute for the purpose of manufacturing beer. The privilege was not conferred upon it of using its funds for the purpose of influencing public sentiment in connection with any election. . . . It was for the legislature to say, in the exercise of the police power, whether use of corporate funds opened the door to corruption and tended to destroy safeguards sought to be placed around elections to protect the purity of the ballot.[52]

The Indiana statute forbidding campaign contributions by corporations makes the officers of the corporation liable for a violation of the law. This provision has been held valid, the state supreme court saying:

> The legislature, without doubt, could have enacted a law making the corporation as such amenable to the law and pun-

[51] For citation of these laws, see Table 5, Column 1.
[52] People *v.* Gansley, 191 Mich. 357, 1916.

ishable for its violation . . . even to the extent of forfeiting its charter. . . . That a member of the board of directors or other officers of a corporation who contributes the money of a corporation to a purpose prohibited by statute shall be made liable to prosecution for so doing is as much within the power of the legislature as is the receiving of money by an officer of a bank after he knows the bank to be insolvent.[53]

In connection with their general civil service regulations eighteen states have placed restrictions on the soliciting of funds from public employees.[54] These restrictions serve the double purpose of reducing the size of the funds handled by the party machines and of maintaining the morale of the public service. While these laws are doubtless evaded, they have, in general, exerted a salutary influence. The Massachusetts and the Montana acts contain the provisions common to these laws. The Massachusetts Act is similar to that of the federal government forbidding soliciting campaign funds from federal employees. It provides that no person holding a public office shall solicit from any other public office holder for political purposes, nor shall any person in any public building solicit from public office holders. The Montana statute provides that no holder of a public position or office other than an office filled by the voters shall make any political contributions, nor shall any person solicit from them.

It is unfortunate that the constitutionality of this Montana statute has not been passed upon by the courts. There is some doubt as to whether the courts would decide that such a statute is an unconstitutional infringement on the rights of this class of citizens, or

[53] State *v.* Fairbanks, 187 Ind. 648.
[54] Table 5, Column 4.

that this is a valid regulation of the activities of the employees of the state. It is very probable, however, that the constitutionality of this statute will never be tested. It is doubtful if any public employee is so anxious to make a political contribution as to contest the validity of this provision, and it would injure a political party for one of its representatives to attempt to have the provision declared unconstitutional.

Only seven states have made it unlawful for political committees to solicit from candidates, and in these states the candidates may make voluntary contributions.[55]

While, in general, the states have made no attempts to restrict campaign contributions, other than those given above, a few states have interesting statutes prohibiting certain classes from contributing at all, or putting a limit on the size of contributions. New York forbids any candidate for a judicial office directly or indirectly to contribute to a political campaign.[56] It is a misdemeanor for any member of the police force to contribute any money to or to solicit or collect any money for, a political fund.[57] It is also a misdemeanor for the owner of a registration or polling place to make a political contribution.[58] Massachusetts and Nebraska provide that no individual, not a candidate, shall contribute more than $1,000 to a campaign fund at any one election.[59] In addition, Nebraska provides that no contribution of more than $25 shall be paid within two

[55] Table 5, Column 5.
[56] Cahill, Cons. Laws, 1923, c. 41, sec. 756.
[57] Ibid., c. 41, sec. 780.
[58] Ibid., c. 41, sec. 781A.
[59] Mass., Gen. Laws, 1921, c. 55, sec. 6. Neb., Comp. Stats., 1922, sec. 2312.

days before an election,[60] and that any person contributing more than $250 in any one campaign shall file a statement of his contribution.[61] In Ohio the amount of expenditure or contribution by any person other than a candidate must not exceed ten per cent of the annual salary of the candidate for whom the contribution is made.[62] In Oregon and Utah the provisions limiting the amount that a candidate may spend in support of his candidacy states that for the purposes of these acts

> The contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow official, or fellow employee of a corporation shall be deemed to be that of the candidate himself.[63]

While, with these few exceptions, the states have done nothing toward placing restrictions on individual contributions, since 1890 they have been very active in attacking the abuses of a large campaign fund by limiting the total amount that may be spent legitimately, by designating the purposes for which it may be spent, by requiring that either the candidate or the treasurer of the political committee be responsible for its collection and expenditure, and by requiring that an itemized statement of all collections and disbursements be filed with some public official. These laws differ radically in the degree in which they attempt the regulation of the use of campaign funds. Tables five and six present a summary of the leading provisions of these statutes and

[60] Ibid.
[61] Ibid., sec. 2313.
[62] Gen. Code, 1920, sec. 5175-29A.
[63] Oregon, Laws 1909, c. 3. Utah, Comp. Laws, 1917, sec. 2376.

show the various ways in which the states have attempted this regulation. It will be seen that only Illinois, Mississippi, Rhode Island, and Tennessee have no laws on this subject.

It is needless to make a further summary of these statutes, but it is worth while to describe the law of one of the states which is fairly complete in its details.

The Alabama statute states specifically the purposes for which funds may be spent. These include: traveling expenses; stenographic work; clerks at campaign headquarters to address, prepare, and mail campaign literature; telegrams; telephone; postage; freight; express; stationery; a list of voters; office rent; newspaper advertising; preparing, printing, and publication of posters, banners, lithographs, notices, and literary material, cards, and pamphlets; compensation of agents to supervise, prepare, and distribute such articles and advertisements; rent of halls in which to address the voters; hire of bands or musicians; reasonable traveling expenses of agents, clerks, and speakers. Payment for any other purpose is declared unlawful.

The amounts which the various candidates may legally expend in their campaigns for nomination and election are definitely set down. It will be noted that these maximum sums cannot be exceeded in the two campaigns, that is, the amount expended in the nomination campaign plus the amount expended in the campaign leading to the election must not exceed the maximum figures. A candidate for United States Senator is limited to an expenditure of ten thousand dollars ($10,000); for representative in Congress, two thousand five hundred dollars ($2,500); for governor ten

thousand dollars ($10,000); for any other state elective office, two thousand five hundred dollars ($2,500). The scale of expenditures for candidates for the minor offices runs in proportion to the above named figures. Expenditure of more than these fixed sums disqualifies the candidate for office.

Every candidate must file with a designated public official the names of from one to five persons who shall receive and distribute all money used in aiding his nomination or election. A candidate may choose himself for this purpose. If a committee is appointed, one member must be chosen treasurer who shall keep a detailed account of all receipts, payments, and liabilities. This committee is to have exclusive control of all money contributed, and can expend it only on proper vouchers. No candidate may expend any money except by contributing to this committee.

Such committees must file with the designated officer a detailed statement of all receipts and expenditures not more than ten days nor less than five days prior to the primary or election, and within ten days after the primary or election. These statements are to include the names of all contributors of amounts in excess of ten dollars, with the amount given by each, and a list of all loans. They must also itemize all expenditures of over five dollars, giving the names of the various persons to whom the money was paid. The specific nature of each item, by whom the service was performed, and the purpose for which the money was expended, must be shown. These statements are open to public inspection.[64]

[64] Alabama, Gen. Acts, 1915, c. 171.

The courts have been called on to decide but comparatively few cases arising in connection with the regulation of campaign contributions and expenditures. To all appearances the various candidates and committees have in general obeyed the laws. Statements correct in form are practically always filed, and these statements show that expenditures have not exceeded the legal maximum, and, naturally, they show only expenditures for legal purposes. It is impossible to determine what proportion of these statements are accurate and truthful.

In the few cases where the courts have passed on the legislation regulating the kinds and amounts of expenditures, they have upheld the principle of such legislation, though at times declaring certain specific provisions invalid. The Kentucky Court of Appeals has held that the payment by a candidate in the prosecution of his canvass of any sum of money, however small, for any other purposes than those designated as legal would nullify an election if this payment was made by the successful candidate, or by others in his behalf and with his knowledge.[65] The mayor of Springfield, Ohio, was ousted from office because more than the legal amount had been spent in his campaign. The Ohio court for the second circuit held that it made no difference whether the candidate paid the money directly out of his own pocket, or whether it was paid for him by his friends and agents.[66] The Kentucky Court of Appeals has taken the contrary view that excess payments by friends should not deprive a candidate of his nomina-

[65] Graham *v.* Alliston, 180 Ky. 687, 1918.
[66] State *v.* Good, 15 Ohio Circuit Court 386, 1898.

tion.[67] It seems apparent that if this Kentucky opinion received general acceptance a great deal of the strength would be taken from the laws limiting the amount of expenditures. Friends could spend as much as they pleased. The candidate could pretend ignorance, and the law could not be enforced.

That provision of the Ohio law which provides disqualification for office for those persons in whose election more than the legal amount has been spent has been held invalid in so far as it applies to persons who have been elected to Congress. The court held that the qualifications for members of Congress are set down in the Constitution of the United States, and that this was an additional qualification beyond the power of the legislature to impose. The one thousand dollar penalty was upheld.[68] This interpretation of an additional qualification is probably sound and is in line with opinions expressed in several treatises on constitutional law.[69] It can easily be seen, however, that it places a serious limitation on the attempt of the states to regulate the use of money at elections.

Several of the state laws declare that in case of violation of the provisions governing campaign contributions and expenditures by the successful candidate the office shall go to the candidate receiving the next highest

[67] Manning *v.* Lewis, 200 Ky. 732, 1923.

[68] State *v.* Russell, 20 Ohio Circuit Court, 551, 1900.

[69] Joseph Story in his *Commentaries on the Constitution of the United States,* says: "It would seem but fair reasoning upon the plainest principles of interpretation, that when the Constitution established certain qualifications, as necessary for office, it meant to exclude all others as prerequisites. From the very nature of such a provision, the affirmation of these qualifications would seem to imply a negative of all others" (I, 433, 2nd. ed.). Cf. C. K. Burdick, *The Law of the American Constitution,* p. 160; W. W. Willoughby, *The Constitutional Law of the United States,* I, 526; "The Legal Qualifications of Representatives," *Amer. Law Rev.* (1869), 3, 410-29.

vote. This part of such statutes has usually been declared void on the ground that it is beyond the power of the legislature to declare any one is elected to office who has not received the highest number of votes.[70] This opinion is sound, for if these provisions were upheld instances might arise when a candidate who had received but very few votes would receive the office. It is perfectly proper to prevent the successful candidate from assuming office if he has violated the law. But in that case a new election should be held instead of awarding the office to a defeated candidate.

It is at times difficult to determine just when a person becomes a candidate for office, thereby bringing himself under the provisions of the laws regulating the use of campaign funds. Persons often seek political support months before they publicly announce their candidacies. Is their use of funds for political purposes during this time to be regulated, or shall such use only be regulated after persons openly become active candidates? The Idaho Supreme Court has said:

> Under our primary election law a person is considered to be and is a candidate when he begins to seek a nomination for that office, and if we give the narrow construction contended for to the term "candidate," the very object and purpose of the statute would be defeated, and a candidate for office might resort to all manner of bribery, promises, and expenditure of money in procuring his nomination up to the time he filed his nomination papers and if he should after that time not commit any bribery, not make any promises, and not make any expenditures of money in aid or promotion of his nomination, he would wholly evade the penal provisions of the statute.[71]

[70] McKinney *v.* Barker, 180 Ky. 526, 1918; Dobbs *v.* Buford, 128 Ga. 483, 1907; State *v.* Bell, 169 Ind. 61, 1907; State *v.* Bateman, 162 N. C. 588, 1913.

[71] Adams *v.* Lansdon, 18 Idaho 505, 1910; also *in re* Liebel's Account, 16 Pa. Dist. 938, 1907.

When the court adopts this construction, it must also assume the power of deciding the question of fact, what activities of a person are activities to gain political support?

The Wisconsin statute provides that all political disbursements must be made through a committee, except that a few incidental expenses may be met by persons residing in the county where such expenses are incurred. The question arose: Is the gathering information concerning the workings of the state administration and sending this information throughout the state just before a state election a violation of the law? The state supreme court held that, in so far as the act applied to such cases, it was unconstitutional.

> The question presented is whether this section restrains or abridges the liberty of the citizen to freely speak and publish his sentiments on all subjects. We think there is no doubt that it does do so. Under its terms a man, or a body of men, who are honestly convinced of the necessity of a change of policy in the state government, commit a crime if they spend any money in another county than their own in bringing their views to the notice of the voters of such other county. . . . If this be not an abridgment of the freedom of speech, it would be difficult to imagine what would be. Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens of other counties without committing a crime.[72]

A strong dissenting opinion was filed, in which the dissenting judges said:

> It is important to observe that the statute does not regulate the expenditures of money by persons in their political activities, or in promulgating their sentiments and convictions on any

[72] State *v.* Pierce, 163 Wis. 615, 1916.

subject or any policy of government disassociated from and independent of influencing voters in an election, and also that no person is precluded from participating as a speaker in political campaigning in elections and speaking his sentiments freely, except that when a person so participates . . . he is required to file statements of his expenditures as such a speaker, or that he carry on his work at the expense of a . . . committee, who are required to file and make public all disbursements incurred by them for political purposes.[73]

The courts have been very strict in their construction of the statutes requiring itemized statements of campaign receipts and expenditures to be filed. The Pennsylvania Superior Court has held that the statement of a candidate merely showing the money paid by the candidate to his agents and failing to show for what purposes these agents used the money was insufficient.[74] The Maryland statute permits treasurers of committees to act through sub-treasurers. The treasurer is required to file a detailed statement of all receipts and expenditures. The state court of appeals held that this statement must include an itemized account of all such activities of the sub-treasurers, for the treasurer could not comply with the law unless the sub-treasurers gave him an itemized statement.[75]

In construing the provisions specifying exactly when these statements shall be filed the courts have again resorted to the rule of reasonableness. The reasonableness is to be determined by the facts of the case. The Kentucky Court of Appeals decided that it was unreasonable to require a candidate for magistrate to file a statement fifteen days before the election because, in an election

[73] Ibid., p. 699.
[74] Umbel's Election, 43 Pa. Sup. 598, 1910.
[75] Healy *v.* State, 115 Md. 381, 1911; also *in re* McLennan, 122 N. Y. Supp. 409, 1910.

for an office such as this, a statement filed fifteen days before an election could be of no more value than one filed a less number of days before. In an election of this kind, it was held, a few days would suffice to give publicity to the statement, while it might take much longer to provide the necessary publicity for a state wide election. The court then laid down its rule concerning the time of filing: "In a contest where a failure to reasonably and substantially comply with this, or any requirement of the Act is made a ground of contest, the question will be determined upon the circumstances of each particular case."[76] The Florida law requires candidates to file their first statement between thirty and twenty-five days before the election. A man became a candidate only twenty-one days before the election. Did his failure to file the first statement prevent his name from being put on the ballot? The Supreme Court of Florida held that if a person in good faith actually becomes a candidate at a time which is less than twenty-five days prior to the election, he must file all statements required, but he is not required to file one before he becomes a candidate.[77]

The Ohio Court of Appeals was called on to decide who is to judge of the truth or completeness of the statement filed. The election board and the Secretary of State had refused to issue a certificate of election to a successful candidate because he had not filed a true statement of his expenditures. The court said:

> There is nothing in this act which authorizes a board or officer whose duty it is to issue a certificate of election to refuse because the statement filed is not a complete statement. . . . All

[76] Sparkman *v.* Saylor, 180 Ky. 263, 1918.
[77] State *v.* Patterson, 67 Fla. 499, 1914.

that such board or officer has to do is to determine whether such a statement has been filed or not. The duty of determining whether such a statement is either incomplete or false devolves upon the court before whom a petition is filed charging that a candidate has not complied with the provisions of this act.[78]

In California the provision that requires a statement of expenses under oath before the successful candidate may assume office has been held unconstitutional on the grounds that the oath of office is contained in the constitution, and that the constitution states that no further oath shall be required.[79] Since all candidates whether successful or not are required to file this sworn statement, it seems that the court would have been justified in considering this oath a valid election regulation and not one contrary to the constitutional prohibition.

The impeachment of Governor Sulzer of New York in 1913 furnished one of the outstanding instances of the application of statutes regulating campaign contributions and expenditures. According to the New York law, candidates are required after the primary or election to file a statement of the contributions to their campaign funds. Sulzer filed a statement showing that $5,460 had been contributed to his campaign. There was conclusive evidence, however, that he had failed to account for an additional $8,500, and the court of impeachment found him guilty of making a false statement of contributions.[80]

In 1927 the conviction of Mayor Duvall of Indianapolis for violation of the Indiana corrupt-practices act

[78] State *v.* Belknap, 3 Ohio App. 190, 1914.

[79] Bradley *v.* Clark, 133 Cal. 196, 1901.

[80] *Proceedings of the Court for the Trial of Impeachments, People of the State of New York by the Assembly thereof against William Sulzer, as Governor,* pp. 46-56 for articles of impeachment, p. 1781 for findings.

of 1913 received wide publicity. Duvall was found guilty of having received $14,500 from William H. Armitage, an Indianapolis politician, to help pay his expenses in the campaign for mayor. In return for this contribution, Duvall agreed to appoint certain men designated by Armitage to the Board of Public Works of the city. The penalty for this violation of the law was a fine of one thousand dollars and thirty days imprisonment. The sentence carried with it the additional penalty of ineligibility to hold a public office for four years from the date of the commission of the offense. This clearly meant that the law required the removal of Duvall from the position of mayor. He made, however, a determined fight to retain his place. He secured the resignation of the city comptroller, his own appointee, and appointed Mrs. Duvall to this position. Since the comptroller succeeds to the mayor's office in case the latter becomes vacant, Duvall arranged it so that if he was forced out of office, a member of the Duvall family would still be mayor. It was not without much litigation that the Duvalls finally resigned, and the city council elected a new mayor.[81]

The question has arisen: How far do the provisions requiring a statement of campaign contributions and expenditures extend? Do they apply to funds spent for political purposes by an organization not connected with a political party? These provisions usually state that all candidates and political committees shall file a statement of their receipts and expenditures. A definition of a

[81] H. W. Marsh, "Indianapolis," *Good Government*, 44 (1927), 8; and Maurice Early, "Indianapolis Mayor Faces Jail Sentence," *Nat. Munic. Rev.*, 16 (1927), 684.

political committee similar to the following New York definition is commonly given. This definition is that:

> The term political committee . . . means any committee or combination of three or more persons coöperating to aid or promote the success or defeat of a political party or principle, or of any proposition submitted to the voter at a public election; or to aid or take part in the election or defeat of a candidate for public office . . . ; but nothing in this article shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any election.[82]

The New York Courts have in two instances had to decide whether certain organizations spending money to influence the views of voters were political committees under the terms of this definition. The Home Rule Tax Association expended funds to defeat a proposed amendment to the New York constitution. Action was brought against the Association for failure to file the statement required of political committees. In deciding this case, the New York Supreme Court said:

> Under the election law, it is plain that where three or more persons coöperate to bring about the election or defeat of a candidate or proposition at an election, and make any expenditure of money in doing so, they must make a report of their receipts and disbursements. The only exception to this rule is that it shall not apply to a committee or organization for the discussion or advancement of political questions without connection with any election. . . . Concededly, the defendant circulated literature seeking to defeat a proposition pending at the election for the amendment of the Constitution. It not only circulated its general literature, but referred to the election and asked the voters receiving the literature . . . to vote against the proposition. . . . It is not claimed that the ap-

[82] Cahill's Cons. Stats., 1923, c. 16, sec. 320. Cf. Comp. Stats. of Neb., 1922, c. 18, sec. 2307.

pellant is required to report as to its general receipts and expenditures, which are made in the prosecution of its ordinary affairs; but it must report, and, in the investigation of its expenses, inquiry may be made with reference to any receipts and expenditures which entered into the campaign carried on by it to defeat the proposition.[83]

The second of these cases concerned the Anti-Saloon League of New York. It was charged that the League through its officers and employees, and at its expense, had circulated campaign literature, furnished workers at the polls, and engaged in other political activities to aid or defeat candidates at the election of 1922. The League claimed that its activities were educational, not political. The Supreme Court ruled that the League was liable to the law requiring the filing of statements, saying:

Many activities in connection with elections are educational, but their motive is to affect the result, and to aid or defeat candidates or propositions submitted for a decision by the ballot box. When money is received for such purposes, the law requires publicity to disclose its source and amount, and to test the sincerity for the public good of the means and propaganda employed. The law is predicated upon the truth that publicity will never hurt a good cause, and has destroyed many bad ones.[84]

The case went to the New York Court of Appeals. While this court reversed the decision of the lower court because of a technicality, it upheld the principle at issue. The Court of Appeals expressed the opinion that the activities of the League had made it liable either under the statute prohibiting contributions from non-political corporations, or under the provision

[83] *In re* Woodbury, 160 N. Y. Supp. 902, 1916.
[84] *In re* Anti-Saloon League of New York, 198 N. Y. Supp. 605, 1923.

requiring the filing of a statement by a political committee.[85]

One of the more recent ideas advanced for the prevention of the control of elections by the use of tremendous campaign funds is that these funds should be supplied by the state, and that no money should be furnished by private individuals, or at least it should be furnished in only very limited amounts. Colorado is the only state that has enacted such legislation.[86] This law provided that the expenses of conducting campaigns leading to an election should be paid only by the state and by the candidates. The state was to pay to the state chairman of each political party twenty-five cents for each vote cast at the last preceding general election for the nominee for governor of that political party. The state chairman was required to give bond that he would cause one-half of this money to be expended for legitimate campaign purposes and the other half to be distributed to the county chairmen of his party. Within thirty days after election he was required to make a report to the state treasurer showing in detail his expenditures of this fund. A candidate was permitted to contribute not more than forty per cent of the first year's salary of the office for which he was a candidate. Any other person making contributions, or any person receiving contributions from any other than these two sources was declared guilty of a felony.

At the time of the election of 1912, the state chairmen of both the Republican and Democratic parties brought action in the case of McDonald *v.* Galligan in the state supreme court petitioning for an order requir-

[85] Ibid., 238 N. Y. 457, 1924.
[86] Acts, 1909, sec. 2401-A.

ing the state treasurer to pay over to them the funds as required by the act. The Attorney-General appeared for the state and filed a demurrer. The demurrer was sustained by the court on the ground that the act was unconstitutional. Under these circumstances there is no written opinion such as is rendered where cases are appealed from the district court. There is, therefore, no indication of the reasons for this opinion of the court.[87]

While Colorado is the only state that has attempted to meet campaign expenses by a grant of public funds, this step has been advocated by a number of men prominent in public life. It will be shown in a later chapter that President Roosevelt suggested that at least part of the expenses of national campaigns should be paid by the United States Government. A discussion of the merits of public payment of campaign expenses will also be made in this later chapter.[88]

Have the restrictions on the use of campaign funds discussed in this chapter brought the desired results? Have they mitigated the abuses that arose when few limitations were placed on the raising and spending of money to influence elections? In trying to reach an answer to this question inquiry was made of the attorney-general of each of the states if he thought such laws had proved themselves efficacious in his state. Thirty-six replies were received. The answer in all but five cases was that these laws had produced good results and had done much toward the elimination of undesirable practices in connection with elections.

[87] Letter of Mr. F. M. Keezer, an attorney of Denver. Cf. R. C. Brooks, *Political Problems and Electoral Problems,* p. 348.

[88] See chapter 8.

The five replies that these acts had not proved effective are very interesting. The Attorney-General of Utah wrote:

> The feature pertaining to the expenditure of funds, in my judgment, should be very greatly modified and changed. I see no reason for attempting to limit the amount one may spend in campaigning, and it is my experience that, in spite of the Corrupt-Practices Act as it stands in this state, and in the nation as well, political parties and individuals find ample ways in avoiding the laws in the expenditure of money for campaign purposes. The laws being as they are simply make individuals and campaign committees, as well as the political organizations, law breakers, as they do not pretend to follow them or live up to their provisions in this regard, and it is useless to try to enforce them in this respect.[89]

The Attorney-General of Wyoming wrote that he did not "set very great store upon their value as a preventative from practices which might be called corrupt and which might be resorted to in an election."[90] The Attorney-General of Minnesota thought that the act "has been of some effectiveness in maintaining the purity of elections," but he added, "Some of its provisions are rather absurd and are more honorable in their breach than in their observance."[91] The Attorney-General of North Dakota thought that on the whole the Corrupt-Practices Act had had a good effect, but that

> In recent years, owing to the bitterness of the fight between "special privilege" on the one side and honest and progressive government on the other, with the towns and cities generally supporting the former and the organized farmer and laborer the latter, many provisions of the act have been violated, be-

[89] Letter, March 3, 1921.
[90] Letter, March 22, 1921.
[91] Letter, February 23, 1921.

cause under such a condition it is impossible to get impartial enforcement of the law.[92]

The Attorney-General of New Mexico thought that the act of his state "has not been effective in obviating fraud and other corruption at elections." He thought the prohibition law had had much more to do with bettering election conditions than any other one thing.[93]

It is probably through the arousal of public interest in, and antagonism to, the expenditure of large sums at elections that the solution must be sought. There is evidence for the belief that public opinion adverse to such expenditure is being developed. Parties and candidates are now very careful to show that their expenditures are of a reasonable amount and that small contributions have been received from a large number of people rather than large contributions from a few. In the campaign of 1916 the Democrats appointed a finance committee in every town of more than five hundred inhabitants and through these committees attempted to have every Democrat contribute toward the cost of the campaign.[94] About two hundred and fifty thousand contributed. In the same campaign, the Republicans appealed for contributions of ten dollars from every Republican.[95] It is generally believed that the large sums spent in behalf of the candidacies of General Wood and Governor Lowden seriously militated against their chances of securing the Republican nomination

[92] Letter, March 3, 1921. This is the opinion of an official elected by the Non-Partisan League.

[93] Letter, February 25, 1921.

[94] T. H. Price, and Richard Spillane, "Stalking for Nine Million Votes," *World's Work*, 32 (1916), p. 663.

[95] *Hearings on Presidential Compaign Expenses Before a Sub-committee of the Committee on Privileges and Elections, U. S. Senate, Pursuant to Sen. Res. no. 357.* 66th. Cong., 2nd. Sess. 1921, p. 1568.

for President in 1920. The Republicans felt that the large expenditures of these two candidates would make it too easy for the Democrats to allege that the nomination had been bought. In the election of that year the Democrats solicited donations from half a million party members. Mr. Hays, in directing the Republican appeal for funds, used many of the methods which had been employed in the war-time Red Cross and Liberty Loan drives to secure as large a number of contributions as possible. Mr. Hays announced that his organization had adopted the policy of not accepting more than $1,000 from any individual. Even during the campaign this policy was not lived up to, and when a deficit of $1,350,000 was found at the end of the campaign, there was no pretense at placing a limit on contributions to meet the deficit.[96]

During the campaign of 1924 the Democrats had difficulty in getting funds from any sources. The Republicans denied that they were collecting an extravagant fund. Advertisements in newspapers were used to convince voters that no more was being spent than the size of the country and the importance of the issues demanded. One of the most striking of these advertisements appeared in reply to a charge of Senator La Follette's that a slush fund was being collected in Mr. Coolidge's behalf. This advertisement was headed: HOW MUCH IS $3,000,000? It then went on to show that Wrigley spends $3,500,000 and Ford $6,000,000 each year in advertising. It was stated that it cost just

[96] Ibid., passim, especially pp. 1080, 1187, 1337, 1387, 1544. Cf. P. O. Ray, *An Introduction to Political Parties and Practical Politics*, pp. 204-7, for an excellent discussion of the movement for the democratizing of party funds.

short of $12,000,000 to persuade people to subscribe for the Victory Loan. The question left with the readers of the advertisement was: If these other expenditures made in appealing to the public are legitimate, is is not equally legitimate for the Republican party to spend $3,000,000 to educate the voters on the issues of a presidential campaign?[97]

These instances show that the political leaders are fearful of an opinion that they are being lavish in the use of money. If the voters become so strongly opposed to such campaign methods that they will refuse to support parties and candidates using them, the solution will have been found. It is believed that the type of legislation with which this chapter has dealt will help greatly toward that end, and for that reason it has been well worth while.[98]

[97] *New York Times*, Oct. 24, 1924.

[98] Since this chapter was written, James K. Pollock's *Party Campaign Funds* has appeared. Mr. Pollock's outstanding contribution is a careful analysis of the party financial statements, national, state, and local. He has supplemented this analysis by interviews and correspondence with leading party officials.

CHAPTER VI

THE POWER OF THE FEDERAL GOVERNMENT OVER ELECTIONS

THE framers of the Federal Constitution made no attempt to take away from the individual states the regulation of the suffrage within their respective borders. It was clearly recognized that the regulations in regard to voting for state and local officials should be made in the state constitutions or by statutes enacted by the state legislatures. The framers of the Federal Constitution did not even provide a uniform system of suffrage for national elections. They provided merely that the electors of the House of Representatives should have the qualifications requisite for electors of the most numerous branch of the legislature of the state in which the elector resided.[1] Although the Constitutional Convention had adopted the qualifications set down by each state, it was felt that the National Government must have some sort of control over the election of its own officers. It was provided, therefore, that

> The time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.[2]

Each state was also given control of the manner in which the electors for president and vice-president should be chosen:

[1] Constitution of United States, Article 1, Section 2.
[2] Ibid., Article 1, Section 4.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.[3]

The Constitution merely retained for Congress the right to determine "the time of choosing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States."[4]

During the debate in the Virginia Convention over the adoption of the Federal Constitution, Mr. Monroe asked why Congress had been given the ultimate control over the time, place and manner of elections of representatives, and the time and manner of the election of Senators, but not over the place of the election of Senators. Mr. Madison answered that the reason for the exception was that if Congress could fix the place of choosing the Senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience and was not necessary for the object of regulating elections. But it was necessary to give the general government a control over the time and manner of choosing the Senators to prevent its own dissolution. It was thought that the regulation of the time, and manner of electing the representatives should be uniform throughout the continent. Some states might regulate the elections on the principles of equality and others might not. Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government. It was found impossible to fix the time,

[3] Ibid., Article 2, Section 1.
[4] Ibid.

place, and manner, of the election of representatives in the Constitution. It was found necessary to leave the regulation of these in the first place to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity and prevent its own dissolution. If these regulations are made properly by the state legislatures, the congressional control will very probably never be exercised.[5]

Hamilton defended this provision of the Constitution very strongly in the *Federalist*. He said:

> Its propriety rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation. . . . There were only three ways in which this power could have been reasonably organized; it must have been either wholly lodged in the national legislature, or wholly in the state legislatures, or primarily in the latter, and ultimately in the former. The last mode has with reason been preferred by the convention. . . . Nothing can be more evident than that an exclusive power of regulating elections for the national government in the hands of the state legislatures would leave the existence of the provision entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs.[6]

Although this Article 1, Section 4, of the Constitution gave Congress sufficient power, should it see fit, to assume entire and exclusive control of the election of Senators and Representatives; to establish regulations governing such elections; and to apply and enforce these regulations by federal officials and tribunals, yet little was done by Congress until the reconstruction

[5] Max Farrand, *Records of the Federal Convention of 1787*, III, 311-14.
[6] *The Federalist*, no. 59, passim.

period. In 1842, Congress, believing that the system employed in some states of electing all the members of the House of Representatives on a general ticket gave an undue power to the party in the majority in a state, enacted a law declaring that each member should be elected by a separate district comprised of contiguous territory.[7]

As early as 1792 Congress, under authority of Article 2, Section 1, of the Constitution, declared that presidential and vice-presidential electors should be appointed by each state within thirty-four days preceding the first Wednesday in December in each presidential year.[8] This provision was amended in 1845 when Congress provided that such electors should be chosen on the Tuesday next after the first Monday in November of the year in which they are to be appointed.[9]

It was not, however, until after the adoption of the Fourteenth and Fifteenth Amendments to the Federal Constitution that Congress made any serious attempt to limit the power of the individual states to specify the electorate, or that Congress took any important steps toward regulating elections. The Fourteenth Amendment, adopted in 1868, provided that

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the Members of the Legislature thereof, is denied to any of the male inhabitants of such State,

[7] U. S. Statutes at Large, vol. 5, p. 491.
[8] Ibid., vol. 1, p. 239.
[9] Vol. 5, p. 721.

being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.[10]

The federal government now had the power to force the several states to extend the suffrage to practically all adult males even in strictly state elections, or suffer the penalty of reduced representation in Congress.

As a matter of fact, however, the penalty has never been applied, although many of the states do deny the right to vote contrary to the provisions of this amendment. From time to time much interest has been aroused concerning the denial to the negroes of the right to vote, and several bills have been introduced into Congress looking toward the enforcement of the penalty for such denial, but no action has been taken. Even the Republican party, which would gain most from negroes being permitted to vote, or from a reduction in Southern representation, has never seriously tried to see that either was accomplished. Its successive platforms from 1868 until the present show less and less desire by the party to do anything about the matter.[11]

The problem has arisen: Does this penalty of reduced representation apply to states which deny the right to vote on other grounds than race, color, or previous condition of servitude? Various qualifications, such as payment of a poll-tax, literacy test, requirement of registration and of residence for a term of years in

[10] Fourteenth Amendment to U. S. Constitution, sec. 2.
[11] K. H. Porter, *A History of Suffrage in the United States*, pp. 221-2.

the state, have been set up in many states. Are these states liable to a reduction in representation under the terms of Section 2 of the Fourteenth Amendment? Under a literal interpretation of this section these states are undoubtedly liable to the penalty, even though such liability may not have been intended at the time the Amendment was drafted. It has been argued, however, that a literal interpretation should not be made, that this section did not vest in Congress the power to reduce the representation of a state which had set up qualifications that were uniform and did not discriminate against individuals on account of race, color, or previous condition of servitude.[12]

Under either of these interpretations, it is practically impossible to determine the number of males to whom suffrage has been denied. The Fourteenth Amendment says the basis of representation shall be reduced in the proportion which the number of male citizens to whom the right to vote has been denied shall bear to the whole number of male citizens twenty-one years of age in such state. It would seem possible to compute this number only in a most haphazard, uncertain fashion. How many males could pay their taxes if they so desired? How many could meet the literacy test if they tried? How nearly can an accurate determination be made of the number excluded because of race? Certainly, the proportion of the actual adult male population to the number voting in an election would offer no basis for reduction in representation. This would assume that all qualified voters exercise their privilege, which is, of

[12] Emmet O'Neal, "The Power of Congress to Reduce Representation in the House of Representatives and in the Electoral College," *North American Rev.*, 181 (1905), 530.

course, a very untrue assumption. The practical difficulties of enforcing this provision, then, are very great.[13]

If the interpretation that this reduction in representation is to be enforced only for a denial of the right to vote because of race or color is accepted, this section has, in effect, been made meaningless by the Fifteenth Amendment. This Amendment, adopted in 1870, provided that "The Right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Congress was given power to enforce this article by appropriate legislation.[14] After the adoption of this Amendment, the representation of a state could not be reduced for a denial of the suffrage because of race or color, for it is unconstitutional for such denial to take place.[15] The anomalous situation would arise of penalizing a state for doing an act which constitutionally it cannot do.[16]

Section one of the Fourteenth Amendment provides that

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

[13] See E. G. Murphy, "Shall the Fourteenth Amendment Be Enforced?" *North American Rev.*, 180 (1905), 109, for a further discussion of these difficulties.

[14] Fifteenth Amendment to the U. S. Constitution.

[15] This does not imply that there is not an actual denial or limitation on voting by negroes in the Southern States. This denial or limitation, however, comes about either through individual actions to which the Fourteenth Amendment is not applicable, or through clever constitutional provisions or legislative enactments which are not openly in contravention of this Amendment.

[16] K. H. Porter, op. cit., p. 225. Cf. O'Neal, Emmet, op. cit.

Soon after the adoption of this Amendment, the important question arose: Is the right to vote one of the privileges and immunities of federal citizenship which is beyond the power of a state to abridge? This issue was clearly met by the United States Supreme Court in the case of Minor *v.* Happersett[17] in 1874. A woman sought to register in Missouri where the law provided only for male suffrage. She maintained that the Fourteenth Amendment forbade any state to abridge the privileges of a United States citizen, that she was a citizen, and that the elective franchise was a privilege of citizenship. Missouri, therefore, had violated the Constitution by denying this right. The court acknowledged this woman to be a citizen and entitled to all the privileges and immunities guaranteed by the Constitution, but it declared that the right to vote was not one of these privileges and immunities. The court said:

> The United States has no voters in the states of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. . . . The amendment (Fourteenth) did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty of such as he already had. No new votes were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitutions and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen. It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted.

[17] 21 Wall. (U. S.) 162, 1874. For similar opinion see U. S. *v.* Anthony, Fed. Cases no. 14,459, 1872. In Pope *v.* Williams, 193 U. S. 621, 1903, a Maryland law requiring declaration of intent to become a state citizen a year before registration was held valid. This was not a denial of a privilege or immunity to a citizen of the United States.

Although the decision in the Minor *v.* Happersett case disposed of the argument that the Fourteenth Amendment extended the privileges and immunities of citizens of the United States to the point of conferring the suffrage upon such citizens, the Supreme Court in a later case, *ex parte* Yarborough,[18] denied that it was correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. It was held that this office was created by the Constitution, and that article 1, section 2 of the Constitution declares how the office shall be filled. The court declared:

> The States in prescribing qualifications for voters for the most numerous branch of their own legislatures do not do this with reference to the election for Members of Congress, nor can they prescribe the qualification for voters for those, *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. . . . It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

The court went on to state that when it had said in the Minor *v.* Happersett case that the Constitution does not confer the right of suffrage upon any one, it was combating the argument that this right was conferred on all citizens. In opposition to this idea the court had said that the right is not definitely conferred by the Constitution alone, because you have to look to the law of the State for the description of the class entitled to vote. But the court had not intended to say that when

[18] 110 U. S. 651, 1883. For a similar opinion see Wiley *v.* Sinkler, 179 U. S. 58, 1900.

the class or person is thus ascertained his right to vote for a member of Congress was not fundamentally based upon the Constitution, which created the office and declared it should be elective, and pointed to the means of ascertaining who should be electors.

In comparing its decision in this case with its previous decision in the Happersett case, the court, while repeating that the right to vote is not a privilege inherent in United States citizenship, was strongly emphasizing the principle that the right of an elector of the most numerous branch of the state legislature to vote for members of Congress is given by Article 1, Section 2 of the Federal Constitution, and that this right may be protected by national legislation.[19]

With the adoption of the Fifteenth Amendment the federal government was given a further control over state elections. While this Amendment did not confer the right of suffrage upon any one individually, nor secure this right to any class of citizens, yet it did decree that neither the United States, nor any state should deprive any citizen of the right to vote because of race, color, or previous condition of servitude. This Amendment did not give negroes the right to vote independent of other restrictions and qualifications imposed by the states on all voters. It simply relieved the negroes of discrimination because of race, color, or former slavery. While the right to vote still comes from the state, the right of exemption from the prohibited discrimination now comes from the United States. To prevent such discrimination the federal government now has the right to prevent any state action that would cause such discrimination. The Supreme Court

[19] See C. K. Burdick, *The Law of the American Constitution*, p. 334.

in the leading case, United States *v.* Reese, expressed this idea, as follows:

The fifteenth amendment does not confer the right of suffrage upon any one. It prevents the states, or the United States, however, from giving preference in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, . . . as it was on account of age, property, or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment there was no constitutional guaranty against this discrimination. Now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.[20]

Probably the most comprehensive interpretation of the Fifteenth Amendment was made by the Supreme Court in the case involving the grandfather clause of the Oklahoma constitution. In this case it was pointed out that while this Amendment gave no right to vote, in its actual operation it might, through its prohibition against discrimination, have the effect of extending the suffrage. Mr. Justice White, speaking for the court, said:

Beyond doubt the amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning. . . . In fact, the very command of the amendment recognizes

[20] U. S. *v.* Reese, 92 U. S. 214, 1875. Other cases upholding the same principle are Anthony *v.* Haldeman, 7 Kans. 50, 1879; LeGrand *v.* U. S., 12 Fed. 577, 1882; U. S. *v.* Cruikshank, 92 U. S. 555, 1875

the possession of the general power by the state, since the amendment seeks to regulate its exercise as to the particular subject with which it deals. But it is equally beyond the possibility of question that the amendment in express terms restricts the power of the United States or the states to abridge or deny the right of a citizen of the United States to vote on account of race, color, or previous condition of servitude. . . . While in the true sense, therefore, the amendment gives no right of suffrage it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out.[21]

The grandfather clause in the Oklahoma constitution was declared violative of the Fifteenth Amendment and, therefore, invalid.

To prevent the denial of the right to vote forbidden by the Fifteenth Amendment, Congress enacted legislation which amounted to a positive direct control over the suffrage in both national and state elections. It will be pointed out in the course of this chapter, however, that Congress went too far in attempting to extend its control under authority of this Amendment, and that the more recent opinions of the United States Supreme Court hold that this Amendment only forbids denial or abridgment of the right to vote on account of race, color, or previous condition of servitude by the states as such.

[21] Guinn *v.* United States, 238 U. S. 347, 1914. A similar opinion on the Maryland grandfather clause case is Myers *v.* Anderson, 238 U. S. 368, 1914; an earlier statement of the operation of the 15th Amend. to the same effect is found in Neal *v.* Delaware, 103 U. S. 370, 1880.

By its statute of May 31, 1870,[22] entitled an "Act to enforce the right of citizens of the United States to vote in the several States of this Union," and the amendment to this act of February 28, 1871,[23] Congress instituted a comprehensive system for dealing with elections. This act first provided that all citizens of the United States otherwise qualified to vote should be entitled to vote without distinction of race, color, or previous condition of servitude. Election officials were required to give all voters equal opportunity to perform any prerequisites for voting. Any official violating this section was declared guilty of a misdemeanor and also on proper action would be required to pay the aggrieved person five hundred dollars. Preventing or hindering any person by bribery or intimidation from doing any act necessary to qualify him for voting or from voting at any election, or any combination for this purpose was similarly penalized. Section nineteen of this statute made divers of the acts which many states had previously penalized as corrupt practices at elections crimes against the United States if committed at any election for representative in the Congress of the United States. This enumeration of unlawful practices included impersonation, repeating, voting without the lawful right to vote, doing an unlawful act to secure the right to vote for himself or any other person, using bribery or intimidation to prevent any qualified voter from voting, inducing any officer of such election to receive illegal votes, or to violate his duty in any way. Any of these acts taking place in connection with registration were equally declared illegal.

[22] U. S. Statutes at Large, vol. 16, p. 140.
[23] U. S. Statutes at Large, vol. 16, p. 433.

As the means of enforcing these provisions the act provided for the appointment by circuit judges of the United States of supervisors to attend places of registration and elections with authority to challenge any person proposing to register or to vote unlawfully, to witness the counting of the votes, and to identify by their signatures the registration of voters and election tally sheets. United States marshals were empowered to appoint special deputies to preserve order and prevent fraud at such elections. The United States district courts were given jurisdiction of all offenses under this act.

The purpose of this act was to carry out the provisions of the Fifteenth Amendment preventing any disqualification from voting because of race, color, or previous condition of servitude. To secure this purpose, Congress committed to federal officers a very full participation in the process of the election of Congressmen from the registration of voters to the final certification of the results.

This right of oversight of elections by the federal government was resisted in some of the states. The controversy reached a judicial settlement in the leading case, *ex parte* Seibold, decided in 1879.[24] This case arose out of the arrest of certain state-appointed judges who were charged with interfering with and resisting supervisors and deputy marshals holding appointment from the federal government under the act of 1870. These state officials were also indicted for stuffing the ballot box. The defendants maintained that the federal officials had been without constitutional authority, and,

[24] 100 U. S. 371, 1879.

therefore, that the resistance offered them was not a legal offense.

Since the decision handed down by Mr. Justice Bradley in this case forms the basis of later court decisions in regard to federal control of elections, it is well to quote extensively from his opinion. Justice Bradley took the constitutional provision giving Congress power to make or alter state regulations concerning Congressional elections as the basis of his opinion. He said:

> There is no declaration that the regulations shall be made either wholly by the state legislatures, or wholly by Congress. If Congress does not interfere, of course, they may be made wholly by the state; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially. On the contrary, the necessary implication is that it may do either. It may either make the regulations, or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls to the state, there results a necessary coöperation of the two governments in regulating the subject. But no repugnance in the system of regulations can arise thence, for the power of Congress over the subject is paramount. When exercised the action of Congress, so far as it extends and conflicts with the regulations of the state, necessarily supersedes them.

As to the supposed incompatibility of independent sanctions and punishments imposed by the two governments for the enforcement of the duties required of their respective officers of election, and for their protection in the performance of those duties, the court said:

> While the State will retain the power of enforcing such of its own regulations as are not superseded by those adopted by Congress, it cannot be disputed that if Congress has power to make regulations, it must have power to enforce them, not

only by punishing the delinquency of officers appointed by the United States, but by restraining and punishing those who attempt to interfere with them in the performance of their duties; and if, as we have shown, Congress may revise existing regulations, and add to or alter the same as far as it deems expedient, there can be as little question that it may impose additional penalties for the prevention of fraud committed by the State officers in the elections, or for their violation of any duty relating thereto whether arising from the common law or from any other law, state or national. . . . When, in the performance of their functions, State officers are called upon to fulfill duties which they owe to the United States as well as to the State, has the former no means of compelling such fulfillment? It is the duty of the states to elect Representatives to Congress. The due and fair election of these Representatives is of vital importance to the United States. . . . It certainly is not obliged to stand by as a passive spectator when duties are violated and outrageous frauds are committed. . . . A violation of duty is an offense against the United States for which the offender is justly amenable to that government. . . . If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not seemed sufficient to require it, and not because Congress has not the requisite power.[25]

This extended quotation shows that the Supreme Court upheld Congress in its extremely comprehensive control of Congressional elections, and since this decision there has been little doubt that Congress can control such elections as far as it deems proper.

In this same case the court expresses its opinion in regard to state elections held at the same time federal elections are held.

In what we have said, it must be remembered that we are dealing only with the subject of election of Representatives to

[25] *Ex parte* Seibold, 100 U. S. 371-88, 1879.

Congress. If for its own convenience a State sees fit to elect State and county officers at the same time and in conjunction with the election of Representatives, Congress will not be thereby deprived of the right to make regulations in reference to the latter. We do not mean to say, however, that for any acts of the officers of election, having exclusive reference to the state or county officers, they will be amenable to federal jurisdiction; nor do we understand that the enactments of Congress now under consideration have any application to such acts.[26]

As a matter of fact, however, the holding of state elections at the same time and place that federal elections are held does give the national government indirectly a rather wide control over state elections. The names of candidates for both federal and state offices are usually on the same ballot. If any illegal methods are used to influence such vote, they equally apply to both the federal and state election. By penalizing such action in regard to the federal election, Congress also may prevent abuses in the state election.

The question of Congressional control over federal elections and the indirect control which might be exerted thereby over state elections was also discussed by the United States Supreme Court in the case *ex parte* Yarborough decided in 1883.[27] Certain citizens of Georgia were under indictment for forcibly preventing a negro from voting in an election at which a Congressman was chosen. The validity of the act of May 31, 1870, under which the indictment was drawn was attacked. The court said:

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of

[26] Ibid., p. 393.

[27] 110 U. S. 651.

which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption. If it has not this power it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.[28] . . . The day fixed for electing members of Congress has been established by Congress without regard to the time set for election of state officers in each state, and but for the fact that the State legislatures have for their own accommodation required state elections to be held at the same time, these elections would be held for Congressmen alone at the time fixed by act of Congress. Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections? To provide, if necessary, the officers who shall conduct them and make returns of the result? And especially to provide, in an election held under its own authority for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes from personal violence and intimidation and the election itself from corruption and fraud? These questions answer themselves, and it is only because the Congress of the United States through long habit and long years of tolerance, has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted.[29]

There is little doubt, then, that the courts will uphold any act which Congress may enact regulating Congressional elections, for Article 1, Section 4, of the Federal Constitution gives all necessary power for such regulations. A federal circuit court has well said: "There is little regarding an election that is not included in the terms, time, place, and manner of holding it."[30]

[28] Ibid., p. 657.

[29] Ibid., p. 661. Other cases upholding the same principle are *ex parte*, Clarke, 100 U. S. 399, 1879; Aczel *v.* U. S., 232 Fed. 652, 1916; *ex parte* Geissler, 9 Bissell (U. S. Circuit) 492, 1880; U. S. *v.* Conway, 18 Blatchford (U. S. Circuit) 566, 1881; Swafford *v.* Templeton, 185 U. S. 487, 1901.

[30] U. S. *v.* Munford, 16 Fed. 223, 1883.

The question of how far the regulations of Congress covering Congressional elections may be applied indirectly to state elections occurring at the same time and place is a very difficult one. As has been shown the United States Supreme Court in the case *ex parte* Seibold questioned, but did not answer, the amenability of state officers to federal control for acts exclusively in connection with state elections.[31] In later cases the court has found it difficult at times to differentiate among acts taking place at a general election where ballots were being cast for both Congressmen and state officers.

A comparison of two leading cases will show the reasoning of the Supreme Court on this subject. In the case *ex parte* Coy[32] there was an indictment in a federal court under the act of 1870 for conspiracy to induce state election officers, at an election at which a representative in Congress and state officers were voted for, to violate a duty under the state law to keep safely all poll lists, tally sheets, and certificates of election, as a result of which these officers were persuaded to let these papers get into the hands of unauthorized persons, who committed fraud on the election returns. The defendants contended that since the indictment did not allege that the papers referring to the Congressional election had been affected they were not amenable to the Act of Congress. The court, however, overruled this view. It said:

> The object to be attained by these acts of Congress is to guard against the danger and the opportunity of tampering with the election returns, as well as against direct and intentional frauds upon the vote for members of that body. The law is

[31] 100 U. S. 393.

[32] 127 U. S. 731, 1888.

violated whenever the evidence concerning the votes cast for that purpose are exposed or subjected in the hands of improper persons or unauthorized individuals to the opportunity of their falsification, or to the danger of such changes or forgeries as may effect that election, whether they actually do so or not, and whether the purpose of the party guilty of thus wresting them from their proper custody and exposing them to such danger might accomplish this result.[33]

In this decision the court laid down a broad construction of the act of Congress, and the control which the federal authorities might assume under this act. Under this decision it was not necessary to prove that fraud had been committed in connection with the election of the representative to Congress. The conspiracy might have been simply to change the returns in the state election taking place at the same time, but the danger to which the Congressional returns had been exposed brought the conspiracy under federal regulation.

A minority of the court thought this decision carried federal control too far. Speaking through Mr. Justice Field the dissenting group said:

In several states, and probably in a majority of them, numerous officers, state, county, city, and village, are elected at the same time with representatives in Congress, and according to the present decision a conspiracy to persuade the officers of election to omit any duty imposed upon them under the laws of the state, though designed merely to affect the election of an inferior magistrate of a village, is an offense against the United States, punishable in the Federal courts. . . . I am not able to assent to a doctrine which leads to this result, and gives the Federal courts power to intermeddle with the action of state officials in an election for local officers whenever a member of Congress may have been voted for at the same time.[34]

[33] Ibid., p. 754.

[34] Ibid., p. 758.

The District Court of Indiana in the case of United States *v.* McBosley,[35] following the line of reasoning set forth in the above decision, stressed even more strongly the necessity for federal control of these mixed elections. In this case the defendant was charged with bribing voters at an election where both a representative in Congress and state officers were to be elected, but it was not clearly shown that voters for the representative had been bought. The court was called on to decide if the Act of 1870 forbidding bribery in Congressional elections applied to this case. The court said:

When Congressional and local elections are held at the same time, and places, and mixed ballots are cast, it is a misleading refinement to say that there are two elections,—a national and a state—held at the same time. It is one election, for the conduct of which the two sovereignties have a common concern; and Congress having unquestionably the paramount, and, when it sees fit to assert it the exclusive power to regulate such elections, must in the first instance at least, determine for itself what regulations are necessary or expedient. . . . It may readily be shown that illegal ballots in the boxes, even though they contain the name of no one voted for for representative in Congress,—especially where there is no certain means of knowing by whom a particular ballot was cast, might seriously complicate, and afford the means and opportunity for contesting the result of a Congressional election, which otherwise would be undisputed. . . . Therefore, it was not necessary that the indictment for illegal voting should have charged that the ballot cast contained the name of any person voted for for representative in Congress; nor was it necessary that in the bribery cases it should be charged that a candidate for Congress was voted for, or not voted for, nor that the bribe was given to influence the voter's action in respect to Congressmen.[36]

[35] 29 Fed. 898, 1886.

[36] Ibid., 898-903.

In this decision the court took very advanced ground. Under it federal authorities could practically control all important elections, since the more important state officials are elected at the same time and place that representatives to Congress are elected. Under this decision it was only necessary to prove that some form of illegal voting had taken place at any election where a Congressman had been voted for, and punishment could be inflicted by the federal government. Unfortunately, this case did not reach the Supreme Court, and one is left in doubt whether the inferior court's extreme position would have been upheld.

In 1893, six years after its decision in the Coy case, the Supreme Court in the case of Blitz *v.* United States,[37] while denying that it receded from its former position certainly called a halt to further assumption of control of elections by the federal government and clearly contradicted the opinion of the lower federal court in the McBosley case. In the Blitz case the defendant was indicted in a federal court under the Act of 1870 for voting under the name of another at an election at which both a representative in Congress and state officers were to be chosen. The indictment did not specifically allege that the defendant had voted for a Congressman. The court held the indictment invalid, saying:

> It is not to be inferred from the decision in the Coy case that . . . the Act of 1870 is applicable to any act or omission of duty upon the part of an officer of election, or of a voter or other person, except such act or omission of duty as affected or might affect the integrity of the election for a representative in Congress. The conspiracy charged in that case did

[37] 153 U. S. 308, 1893.

imperil the integrity of the vote for representative in Congress, because the returns of the election related to representatives in Congress as well as to state officers, and were liable to be falsified if they passed, before certificates of election were issued, into the hands of unauthorized persons. But this reasoning has no application to the present case. Voting in the name of another for a state officer cannot possibly affect the integrity of an election for representative in Congress. With frauds of that character the national government has no concern, and, therefore, an indictment under . . . the Act of 1870 for knowingly personating and voting under the name of another should clearly show that the accused actually voted for a representative in Congress, and not simply that in voting he falsely personated another at a general election at which such representative was or could have been chosen.[38]

In the same year, 1887, in which one inferior federal court in the McBosley case was upholding the widest supervision of elections by the federal government, another such court in the case of *ex parte* Perkins[39] was setting forth the limitations on federal control. Here the court said:

It does not follow because Congress can legislate for the protection and purity of elections for representatives in Congress that it may assume full control of all elections at which such representatives are chosen in conjunction with state and county officers. The mere fact that a representative in Congress is voted for at an election of state and county officers does not authorize Congress to control such election in matters which in no wise relate to or affect the result so far as it concerns the United States. It has no more right to regulate the election of state and county officers under those circumstances than it would have if no representative in Congress were voted for.

[38] Ibid., p. 314.

[39] 29 Fed. 900, 1887.

These differing decisions make it impossible to make a general statement of just how far Congress may indirectly control state elections through its undoubted power to make regulations for the election of representatives. Some of the inferior federal courts have required clear proof that the unlawful voting or other illegal acts took place specifically at an election of a representative; other inferior courts have upheld indictments where it was only shown that the federal election had been exposed to illegal practices. The Supreme Court has upheld both principles, but its most recent decisions have favored the principle that clear proof must be given that the illegal acts took place in connection with the election of a representative.

In the two cases which have come before the Supreme Court in regard to federal control of elections at which presidential electors are chosen, the court has held that the Constitution has given Congress no power to control such elections. In the case *in re* Green[40] the defendant had been sentenced by the Virginia court for unlawfully voting in an election for presidential electors. The defendant contended that the state court had no jurisdiction in such cases. In reviewing this case the United States Supreme Court said:

> The only right and duties expressly vested by the Constitution in the National Government with regard to the appointment or the votes of presidential electors are by those provisions which authorize Congress to determine the time of choosing the electors and the day on which they shall give their votes, and which direct that the certificates of their votes shall be opened by the president of the Senate in the presence of the two houses of Congress, and the votes shall then be counted. . . .

[40] 134 U. S. 377, 1890.

The sole function of the presidential electors is to cast, certify, and transmit the vote of the State for President and Vice-President of the nation. Although the electors are appointed and act under and pursuant to the Constitution of the United States, they are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators.

A similar opinion was expressed by the Supreme Court in the case of McPherson *v.* Blacker.[41] In this case the validity of a Michigan statute providing for the election of presidential electors by districts was attacked. The Supreme Court upheld the statute, saying:

The appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. . . . Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same throughout the United States, but otherwise the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and Federal influence might be excluded.

The Committee on Elections of the House of Representatives in the sixtieth Congress made a rather extensive report concerning the control which Congress might exert over elections for presidential electors. This committee reached the conclusion that while Congress might not directly enact regulations for such elections, it might exert an indirect control over them since they take place at the same time as the elections for representatives in Congress. The committee reported:

We are confronted with the proposition that Congress has no constitutional authority to regulate or control the election of

[41] 146 U. S. 35, 1892.

presidential electors. . . . While Congress has no direct authority to regulate the election of electors, yet as long as state legislatures permit or provide for the election of electors by the people, Congress has an indirect control over such elections by virtue of its constitutional authority to regulate and control the election of members of the House of Representatives. . . . By preventing illegal voting at such elections and ballot-box stuffing or fraudulent counting of the votes, it not only controls the election as to Representatives in Congress, but indirectly controls and regulates all other officers, whether state, county, or municipal, if they are voted for at the same election. It would follow, therefore, that if electors for president and vice-president were voted for at the same election where members of the House of Representatives were chosen, Congress would have practically the same supervision over them as it would have over representatives.[42]

It has been shown that Congress in its act of May 31, 1870 enacted very strict provisions to enforce the Fifteenth Amendment. In several decisions, however, the courts have declared that this act went further than the Amendment warranted. In the Reese case, previously cited, a negro had been refused the right to vote in a Kentucky election because he had not paid his poll tax. The negro claimed that he had been afforded no opportunity to pay the tax. The third section of the Act of 1870 declared an offer to perform any prerequisite for voting, if such act failed because of the election official, should be deemed a lawful performance, and the ballot of such voter must be received. The fourth section penalized any attempt by force, bribery, or other unlawful means, to prevent or obstruct any citizen from doing any act required to be done to qualify him to vote or from voting at any election. In construing these sections in the Reese case, the Supreme Court said:

[42] House Report, no. 1505, 60th. Congress, 1st. Sess., passim, 1908.

The power of Congress to legislate at all upon the subject of voting at state elections rests upon this (fifteenth) amendment. . . . It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified voter at state elections. It is only when the wrongful refusal at such election is because of race, color, or previous condition of servitude that Congress can interfere and provide for its punishment. The third section does not in express terms limit the offense of an inspector of elections to a wrongful discrimination on account of race, color, and previous condition of servitude. . . . In the fourth section we find no words of limitation or reference even that can be construed as manifesting any intention to confine its provision to the terms of the Fifteenth Amendment.[43]

Both of these sections were declared not to be appropriate legislation for carrying out the Fifteenth Amendment.

Section five of the Act of 1870 which declares it unlawful for any person to prevent or hinder another from exercising the right of suffrage, to whom that right has been guaranteed by the Fifteenth Amendment, by means of bribery or threats, has been declared unconstitutional because it is not limited in its operation to congressional elections, nor to offenses grounded upon race, color, or previous condition of servitude. A clear statement of this opinion is found in the case of United States *v.* Cruikshank.[44] In this case the Supreme Court said:

Inasmuch, therefore, that it does not appear in these counts that the intent of the defendants was to prevent these parties from exercising their rights to vote on account of their race . . . , it does not appear that it was their intent to interfere

[43] U. S. *v.* Reese, 92 U. S. 214, 1875.
[44] 92 U. S. 555, 1875; also Lackey *v.* United States, 107 Fed. 114, 1901.

with any right granted or secured by the Constitution or laws of the United States. We may suspect that race was the cause of the hostility; but it is not averred. This is material to a description of the substance of the offense, and cannot be supplied by implication. . . . There is nothing to show that the elections voted at were any other than State elections, or that the conspiracy was formed on account of the race of the parties against whom the conspirators were to act. The charge as made is really of nothing more than a conspiracy to commit a breach of the peace within a State. Certainly it will not be claimed that the United States have the power or are required to do mere police duty in the States.

The most important and far-reaching judicial interpretation of the Fifteenth Amendment, however, has been that it applies only to the denial or abridgment of the franchise by the United States or by a state and has no reference to individual action. The best statement of this principle was given in the case of Karem *v.* United States.[45] A United States Circuit Court said:

The right to vote in its own election can be conferred only by the state. No one, therefore, but the state can "deny or abridge" the right to vote. . . . Individuals may by unlawful force prevent an otherwise lawful voter from voting. But it would simply be an act of lawless violence. The right of suffrage would not be denied or abridged. Individuals cannot deny or abridge the right of suffrage, for they cannot confer it. . . . To deny or abridge it in the sense and meaning of the fifteenth amendment there must be some act of the state through its legislative, judicial, or executive departments. Some one exercising the power of the state, whether with or without the sanction of the law of the state, must deny to otherwise qualified voters the right to vote on account of race, color, or condition. . . . To justify legislation directed to the mere lawless acts of individuals at a purely state election, even

[45] 121 Fed. 250, 1903. Other cases expressing the same opinion are: U. S. *v.* Amsden, 6 Fed. 819, 1881; James *v.* Bowman, 190 U. S. 127, 1902; LeGrand *v.* U. S., 12 Fed. 577, 1882.

though such acts be based upon color or race, would be to enter the domain of the police power of the state. We speak only of purely state elections, for the power of Congress over its own election rests upon altogether different principles.

This decision in the Karem case affords another instance of the tendency of the federal courts to curb the indirect control of the federal government over state elections which in some cases had previously been upheld because these elections took place at the same time as Congressional elections. In the Yarborough case, for example, where certain citizens of Georgia had been indicted under the terms of the Act of 1870 for forcibly preventing a negro from voting in an election at which a Congressman was chosen, the Supreme Court upheld the validity of the Act. In this decision the principle was upheld that it was not necessary to show that the federal election had been affected by violence. It was only necessary to show that it had been exposed to this danger.[46] In the later Karem case, the circuit court made no denial that Congress could regulate elections for representatives. But it did say that the only power Congress has to interfere with a strictly state election is to prevent the state as such from denying or abridging the right to vote because of race, color, or previous condition of servitude. The implication is strong, moreover, that for Congressional regulation to be applied to elections where both national and state officers are being voted for, there must be clear proof that illegal acts took place in connection with the national election.

The courts, then, have gone far to limit the control of elections which it was thought had been given to the federal government by the Fifteenth Amendment,

[46] See present chapter, pp. 166-7.

which control Congress attempted to exercise by its Act of 1870. Control over state elections is still vested in the state, except that the state can make no discrimination because of race, color, or former slavery. For federal penalties to be incurred, moreover, such discriminations must be made by state authorities. The federal government may not inflict penalties on individuals for anything they may do in strictly state elections.

With the return of the Democratic party to power, Congress in 1894 repealed the most important sections of the Act of 1870, with its amendment of 1871.[47] From time to time since 1894 there has been agitation for the enactment of a similar measure, but nothing has resulted from the agitation.

The power of the federal government over elections may be summarized as follows: Congress has the clear constitutional authority to make all needed regulations for elections of representatives in Congress; by its regulation of Congressional elections, it may exert a certain indefinite indirect control over the election of presidential electors and over state elections taking place at the same time as elections for members of Congress; under authority of the Fifteenth Amendment, the federal government can prevent any denial of the right to vote by any state because of race, color, or previous condition of servitude. Finally, since the adoption of the constitutional amendment providing for the popular election of United States Senators, Congress undoubtedly has the same right to regulate their election that it has to regulate the election of members of the lower house.

[47] United States Statutes at Large, vol. 28, p. 36.

CHAPTER VII

FEDERAL REGULATION OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

It has been shown that the great majority of states are now attempting to regulate campaign contributions and expenditures. Various state statutes prohibit contributions from corporations, designate the maximum sums that may be spent by candidates for the several offices, and in many cases specify for what purposes these campaign funds may be spent.[1] But a large part of the campaign funds is now expended by the national party committees operating in all the states. The individual state legislature was powerless to prevent abuses arising through the use of funds by these national committees. Demand arose, therefore, for regulatory legislation by Congress.

As long as the national campaign expenses remained comparatively small, there was little need for action by Congress. Mr. Perry Belmont reports that the total sum at the command of the Democratic National Committee in the Buchanan campaign was less than twenty-five thousand dollars, and that the amount expended by the Republican National Committee during the campaign of 1860 was only a little more than one hundred thousand dollars.[2] In the subsequent elections the expenditures of both parties rapidly increased until it was reported that in the election of 1896 the Republican party alone spent sixteen million, five hundred thousand

[1] See chapter 5.

[2] Perry Belmont, *Publicity of Election Expenditures,* originally published in *North Am. Rev.,* Feb. 1905, printed as Sen. Doc. no. 89, 59th. Cong., 1st Sess.

dollars.[3] Croly, in his life of Hanna, states that estimates like this one grossly exaggerate the amount spent in this campaign. He admits that the amount spent was larger than in any previous campaign, but the audited accounts of the Republican National Committee exhibit collection of only about three million, five hundred thousand dollars, and some of this was not spent.[4]

The reports of expenditures by national committees prior to 1910 are merely estimates, for it was not until that year that these committees were required to file statements of their receipts and expenditures. But the sworn statements filed during the election of 1920 show that the earlier estimates may not have been extremely extravagant. The ten candidates for the Republican nomination for president in 1920 reported that they had spent $2,859,551. Of this amount $1,773,303 was spent in General Wood's behalf. The seven Democratic candidates reported expenditures of $120,482.[5] In connection with the final election of 1920, the Republican National Committee reported the expenditure of $5,319,729.32, the Republican Congressional Committee $375,969.05, and the Republican Senatorial Committee $326,980.29. On the Democratic side, the National Committee reported $1,318,274.02, the Congressional Committee $24,498.05, and the Senatorial Committee $6,675.[6] The grand total of expenditures in the campaign to secure the presidential nomination and of those incurred by the various committees oper-

[3] Statement of Rep. Sulzer of New York. *Cong. Rec.*, 40 (1906), 5617.
[4] Herbert Croly, *Marcus Alonzo Hanna, His Life and Work*, p. 220.
[5] *Hearings Before Committee on Privileges and Elections*, U. S. Senate, Pursuant to Sen. Res. no. 357, 66th. Cong., 2nd. Sess., 1921, p. 2943.
[6] Ibid., p. 2945.

ating in more than one state thus exceeded ten million dollars.

During the presidential campaign of 1924 the Senate appointed a committee to investigate the use of funds during the campaign. Senator Borah was elected chairman of this committee, and it will be hereafter referred to as the Borah Committee. According to the facts developed by this committee, the National Republican Committee collected $4,360,478.82 and expended $4,270,469.01. The Democratic National Committee collected $821,037.05 and expended $903,908.21. The National Progressive Committee collected $221,837.21 and expended $221,977.58.[7]

A comparison of the expenditures of the three national committees during the campaign of 1924 with the expenditures of the two national committees during the campaign of 1920 shows a decrease of $1,241,-648.54. This decrease can probably be explained by the fact that the Democratic party could not collect as much as at the previous election and that the Republicans were so confident of winning the election that they did not attempt to collect as much as in 1920.

The mere fact that such enormous sums were being spent in the national elections was sufficient to cause agitation for publicity and regulation. But as it became generally known that a large part of these funds came from a very few men much more concern was aroused. For example, in the campaign of 1904, Thomas F. Ryan gave four hundred and fifty thousand dollars to the Democratic fund, while August Belmont added another two hundred and fifty thousand. On the Re-

[7] *Report of the Special Committee on Campaign Expenditures.* Senate Report no. 1100, 68th. Cong., 2nd. Sess., p. 2.

publican side, G. W. Perkins contributed one hundred and sixty thousand dollars, E. H. Harriman and J. P. Morgan, one hundred and fifty thousand each, and G. J. Gould and C. M. Depew, one hundred thousand each.[8] It was easy to believe that these men were not contributing such large sums of money without an assurance of a return on their investment.

Congressional regulation of campaign contributions began with an attempt to prevent civil service employees from being assessed for political purposes. An act of Congress passed in 1867 provided that no officer or employee of the government should require or request any workingman in any navy yard to contribute any money for political purposes. Any one disobeying this regulation was to be dismissed from the service.[9] Section six of the appropriation bill of 1876 carried this prohibition much further. It provided that "all executive officers or employees of the United States not appointed by the president, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from any other officer or employee of the government any money or property or other thing of value for political purposes." In addition to the penalty of discharge from the service of the United States for any violation of this section, such violation was also declared a misdemeanor to be punished by a fine not exceeding five hundred dollars.[10]

The final comprehensive regulation of political contributions by federal employees is found in the Act to Regulate and Improve the Civil Service of the United

[8] *Hearing Before Senate Committee on Privileges and Elections,* 1912-13, p. 1104.
[9] United States Statutes at Large, vol. 14, p. 492.
[10] Laws of 1876, chap. 287.

State enacted January 16, 1883.[11] Five sections of this act deal with these contributions. The soliciting of contributions by any federal officer or employee from other such officers or employees is prohibited in the following detailed language:

> No Senator or Representative, . . . or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, military, or naval service of the United States shall directly or indirectly, solicit or receive, or be in any matter concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purposes whatever, from any officer, clerk, or employee of the United States, or any department or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the treasury of the United States.

In the same detailed language all officers and employees of the United States are prohibited from making any political contribution to any other such officer or employee. Moreover, all persons are forbidden to solicit or receive contributions of this nature in any room or building occupied in the discharge of official duties by any officer or employee of the United States. Any violation of these sections is made a misdemeanor punishable by a fine not exceeding five thousand dollars, or imprisonment of not more than three years, or both.

In this act Congress had no intention of forbidding all political contributions by federal employees. Its main purpose was to forbid a forced levy on subordinate employees by those in higher positions. Contributions could still be made to persons not federal officers or

[11] Laws of 1883, chap. 27, secs. 11-15.

employees except that they must not be made in a building used for public purposes.

In the case of *ex parte* Curtis,[12] arising under the earlier act of 1876, the constitutionality of this class of legislation was attacked. Curtis, an employee of the United States, was indicted and convicted under this act for receiving money for political purposes from other employees of the United States. He denied the constitutionality of the act under which he was indicted. Chief Justice Waite, in giving the opinion of the United States Supreme Court, said:

> The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service. Clearly such a purpose is within the just scope of legislative power, and it is not easy to see why the act now under consideration does not come fairly within the legitimate means to such an end. . . . If there were no other reasons for legislation of this character than such as relate to the protection of those in the public service against unjust exactions, its constitutionality would, in our opinion, be clear; but there are others to our mind equally good. If persons in public employ may be called on by those in authority to contribute from their personal income to the expenses of political campaigns, and a refusal may lead to the putting of good men out of the service, liberal payments may be made the ground for keeping poor ones in. So, too, if a part of the compensation received for public services must be contributed for political purposes, it is easy to see that an increase of compensation may be required to provide the means to make the contribution, and that in this way the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage.

[12] 106 U. S. 371, 1882.

In 1902 President Roosevelt asked Attorney-General Knox for his opinion concerning the operation of that section of the act of 1883 which forbids a federal officer or employee to solicit from another such officer or employee. Senator Quay, Chairman of the Pennsylvania Republican State Committee and Representative Dick, Chairman of the Republican Committee in Ohio, had sent circular letters to the homes of various federal employees asking for campaign contributions. Mr. Roosevelt inquired of Mr. Knox if this was a violation of the Act of 1883. The Attorney-General replied:

> Whatever the particular form of words adopted in such circulars in order to show a request rather than a demand and to give to responses a quasi-voluntary character, the explicit and comprehensive words of the statute forbidding those barred by their public relations to solicit from Federal officials, directly or indirectly, or to be "in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political purpose whatever," unquestionably condemns all such circulars.[13]

Despite this strong opinion the Attorney-General caused no prosecution to be brought against these men. In concluding his opinion, he said: "I do not understand that I am now called upon by your present reference to consider the penal section of the act."[14] It is difficult to see how Mr. Knox could have refrained from considering the penal section when an action which he declared contrary to law was brought to his attention.

The courts have been very strict in their interpretation of that section of the Civil Service Act which forbids any person to solicit political contributions in a public building. They have extended the prohibition to

[13] 24 Opinions Attorney General 133, 1902. [14] Ibid.

solicitation by letters addressed to those employed in such a building. In the case of United States *v.* Thayer,[15] Thayer was indicted for soliciting political contributions from employees of the United States in a post office building. It was admitted that Thayer was not in the building, but it was charged that he sent letters to these employees which were received by them in the post office. The question at issue was whether Thayer's physical presence in the building was necessary to create the offense. The Supreme Court, in deciding this case, said:

> It appears to us no more open to doubt that the statute prohibits solicitation by written as well as by spoken words. It prohibits all persons to solicit "in any manner whatever." . . . It is not primarily to save employees from interruption or annoyance in their business. It is to check a political abuse which is not different in kind whether practiced by letter or by words of mouth. . . . The defendant solicited money for campaign purposes; he did not solicit until the letter was actually received in the building; he did solicit when the letter was received and read there, and the solicitation was in the place where the letter was received.

The case of United States *v.* Smith[16] shows to what an extreme limit the courts will hold any solicitation in a public building an offense against the act of 1883. Smith, the chairman of a Republican county committee, wrote letters to various individuals asking for contributions. One of these was addressed to the local postmaster at his home address. Smith went to the postoffice to mail the letters. He saw the postmaster and gave him the letter addressed to him. Was this a solici-

[15] 209 U. S. 39, 1908.
[16] 163 Fed. 926, 1908.

tation within a public building? The District Court of Alabama answered this query, as follows:

> To constitute the offense the statute creates, it is not necessary that the solicitation be made verbally. The illegal solicitation may as well be made by a written request personally delivered in the forbidden place. An effort to get money in that way for a political purpose offends the letter and policy of the statute as clearly as the most persistent and earnest verbal solicitation. . . . When the defendant, while in the post office, intentionally handed the letter to the postmaster, knowing that it contained a request for a political contribution from the person to whom the letter was delivered, he undoubtedly violated the statute. The solicitation was then complete, in a place where it was unlawful to ask for a political contribution. It is entirely immaterial that the letter was not then opened, or that the postmaster was not then advised of its contents, or, for that matter, that the request in the letter was never afterwards acted upon or discussed between the parties.

The courts, then, have upheld to the limit the comprehensive statutes regulating political contributions by government employees. It is questionable, however, whether these statutes have actually prevented assessments on these employees. In many cases the employee would be afraid not to contribute to the campaign funds. If he should enter complaint that a contribution has been solicited in violation of the law, he would fear that under some pretext his position would be taken from him. For this reason these statutes are probably often evaded.

The next step that Congress took in the regulation of campaign funds was the prohibition of contributions by corporations. The demand that corporations be taken out of politics became very strong after the election of 1896. The reckless expenditure of money in this cam-

paign and the manner in which it was collected caused thoughtful people much alarm. An anonymous writer in the *World's Work* has described Mr. Hanna's method of financing the campaign as follows:

> Besides the iron and steel men of Pennsylvania and the great interstate railroads, Mr. Hanna assessed the insurance companies, the banks, and all other financial concerns which he could reach. He arranged for local committees to raise lump sums which they apportioned on the basis of the capital of the bank, or capital rating of a business.[17]

Mr. Croly states that Hanna converted the practice of soliciting contributions from a matter of political begging into a matter of systematic assessment according to the means of the individual and institution. He reports that the Standard Oil Company contributed $250,000 to be used by Mr. Hanna in the campaign.[18]

The National Bankers' Association was especially interested in the campaign of 1896 because of the financial issue. In March, 1896, the Association sent out a letter to all bankers urging them to use their influence with their customers against free silver coinage, and in September a committee of bankers sent a circular letter to national banks urging them to contribute to the Republican campaign fund.[19] The following is a copy of a letter sent by a committee of Pittsburgh bankers September 2, 1896 to the City Deposit Bank:

> The undersigned have been appointed a committee to solicit from the banks funds in aid of the campaign for the Republican National Committee. The banks in New York and some other places have been contributing on the basis of one-quarter

[17] *World's Work*, 12 (1906), 8070.
[18] Herbert Croly, *Marcus Alonzo Hanna, His Life and Work*, p. 220.
[19] J. A. Woodburn, *Political Parties and Party Problems in the United States*, p. 409.

of one per cent. of their combined capital and surplus, and the National Committee requests us to ask the Pittsburgh banks to do the same. We only started yesterday afternoon and so far have found all the banks we have approached willing to contribute on this basis. So far we have received the following subscriptions: (Names of seven banks with amount of subscriptions). . . . The subscriptions here are payable to J. S. McKean, chairman of the auxiliary finance committee, and by that committee will be turned over to the national treasurer, Cornelius N. Bliss. On the basis of what the other banks are doing the City Deposit bank is asked to subscribe one-quarter of one per cent. of its capital and surplus, which would be somewhere in the neighborhood of $450.[20]

This communication was signed by T. H. Given, F. R. Day, and A. W. Mellon.

This wholesale assessment of banks to raise a campaign fund, the testimony brought out in the New York insurance investigation,[21] and such evidence as that given by the Sugar Trust officials before the Senate Committee[22] demonstrated conclusively that the large corporations and combinations were trying to affect the results of elections. It was believed that bargains were made between these large businesses and candidates, and Congress was urged to enact laws to keep corporations out of the political field.

President Roosevelt lent his powerful influence to this movement in his message to Congress of December 5, 1905. He said: "All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholder's money for such purposes."[23] The Senate passed a bill carrying out the

[20] Presented to the Senate by Senator B. R. Tillman. *Cong. Rec.*, 40, 5366.
[21] Chapter 5, p. 108.
[22] Ibid., p. 112.
[23] *Congressional Record*, 40 (1905), 96.

President's suggestion on June 9, 1906. This bill prohibited any corporation contributing to any election for presidential electors, representatives in Congress, or member of a legislature which would elect a United States Senator. Any violation of this provision was made punishable by a fine of five thousand dollars imposed upon the corporation and one thousand dollars upon any director or official who participated in the contribution or sanctioned it.[24] This bill met defeat in the lower house.[25]

Mr. Roosevelt brought renewed pressure for the enactment of this bill in his message to Congress, December 4, 1906. He said:

> I again recommend the law prohibiting all corporations from contributing to the campaign expenses of any party. Such a bill has already passed one house of Congress. Let individuals contribute as they desire, but let us prohibit in an effective fashion all corporations from making contributions for any political purposes, directly or indirectly.[26]

Less than two months after this message was sent, Congress enacted the statute recommended by the President. It was declared unlawful for any national bank or any corporation organized under the laws of Congress to make a contribution in connection with any election to any political office. It was also made unlawful for any corporation whatever to make a contribution in connection with any election at which presidential electors or a representative in Congress was to be voted for, or any election by a state legislature of a United States Senator. Corporations violating the law were made punishable by a fine not to exceed five thousand

[24] *Congressional Record*, 40 (1906), 8162.
[25] Ibid., 8275.
[26] Ibid., 41, 22.

dollars, and any officer or director consenting to the contribution was to be fined not in excess of one thousand dollars, or imprisoned not more than one year, or sustain both the fine and imprisonment.[27]

It was nine years before the courts were called to pass on the validity of this statute, and in only one case has it ever come before the courts. There are good reasons for this failure to contest the validity of the statute, even though some of its provisions are of very doubtful constitutionality. It would be very bad political policy for a party to be linked up with a corporation in its attempt to have the law declared void. No party wants to have the reputation of seeking gifts from corporations. Public sentiment is, or is believed to be, opposed to such contributions. It is easy, moreover, for a gift from a corporation to be disguised as a gift from an individual. The contribution is received, and the undesired publicity avoided.

The one attack on the validity of the law was made by the United States Brewers' Association. This corporation was indicted for making contributions in connection with an election at which, among others, a representative in Congress was voted for. The corporation laid down the general complaint that the whole statute was beyond the power of Congress to enact and, more specifically, it alleged that the statute was an infringement on the constitutional guarantee of freedom of speech, and also that it was a regulation of state elections beyond the power of Congress to make. This last allegation was against the provision prohibiting contributions in connection with the election of presidential electors. The United States Court for the West-

[27] *United States Statutes at Large*, 34, 814.

ern District of Pennsylvania declared the statute valid as far as this case was concerned, saying:

> By various acts Congress has undertaken to control the agencies by which political activities in campaigns may be carried on. . . . The Act of 1907 is in line with this wise and beneficent legislation by undertaking to place a prohibition against political activities by those artificial beings who are merely the creatures of the law. That Congress may control those corporations which the federal government has created goes for the saying. And when we reflect that Congress is here dealing with elections at which representatives in Congress are being voted for; that an election is intended to be the free and untrammeled choice of the electors; that any interference with the right of the elector to make up his mind how he will vote is as much an interference with his right to vote as if prevented from depositing his ballot; that the concerted use of money is one of the many dangerous agencies in corrupting the elector and debauching the election; that any law the purpose of which is to enable a free and intelligent choice, and an untrammeled expression of that choice in the ballot box is a regulation of the manner of holding the election,—the power of Congress to prohibit corporations of the state from making contributions in connection with any such election appears to follow as a natural and necessary consequence. . . . The statute neither prevents, nor purports to prohibit the freedom of the speech or of the press. Its purpose is to guard elections from corrupting influences in arriving at their choice.[28]

The court expressed no opinion concerning the power of Congress to prohibit contributions in connection with the election of presidential electors. It merely said that if it should be held that Congress exceeded its power in this prohibition that would not invalidate the statute except as to that particular provision.

It is unfortunate that there has never been an expression of judicial opinion concerning the prohibition

[28] U. S. *v.* U. S. Brewers' Assoc., 239 Fed. 163, 1916.

of gifts by corporations to influence the choice of presidential electors. As will be shown later in this chapter, subsequent legislation by Congress has provided for publicity for all contributions made to influence presidential elections, and much more stringent regulation of the use of funds at these elections has been proposed. After the decisions handed down in the cases of *in re* Green[29] and McPherson *v.* Blacker,[30] it is difficult to see how Congress may constitutionally regulate presidential elections. It was clearly held in these cases that electors are state officers. If any corporation should ever contest the provision prohibiting this class of gifts, the court would have to declare this prohibition invalid if its decision was consistent with the decisions of the Supreme Court in the two cases mentioned above. It is equally impossible to see how the courts could have upheld the section prohibiting gifts from corporations to influence the choice of United States Senators by the state legislatures, for in the Green case, the Supreme Court, in pointing out that presidential electors are state officers, said: "They are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators."[31] This section, of course, lost its importance with the adoption of the Seventeenth Amendment, but it is still a most interesting question what the opinion of the Supreme Court would be concerning Congressional regulation of the use of funds in presidential campaigns.

[29] 134 U. S. 377, 1890.
[30] McPherson *v.* Blacker, 146 U. S. 1, 1892.
[31] *In re* Green, 134 U. S. 377, 1890.

It has been shown in chapter five that beginning with the New York Act of 1890 most of the states have enacted legislation requiring publicity of campaign contributions and expenditures. But this legislation possessed local rather than national significance. Individual states could not pass regulations which would be applicable to the national committees operating in all the states. This lack of control over the national committees often nullified state control over the state political organizations. It was easy to hide the identity of contributions made to the national committee and then handed over to the state committee. The state committee would then only report a lump sum received from the national committee.

The demand for national legislation requiring the publication of campaign contributions and expenditures by the national committees became outspoken during the presidential campaign of 1904. This demand grew largely out of the acrimonious discussion carried on between the presidential candidates of the two great parties, each one accusing the other of attempting to buy the election with funds supplied by individuals and corporations interested in securing governmental favors.[32] The activities of the National Publicity Law Association, whose membership comprised prominent men of both the great parties, aroused much interest in this kind of legislation. Mr. Perry Belmont, the president of the organization, contributed a number of articles to various publications, which were later presented to Congress and published as Senate or House Documents.

[32] Perry Belmont, *Abolition of Secrecy of Party Funds.* Sen. Doc. no. 495, 62nd. Cong., 2nd. Sess., p. 84. 1912.

President Roosevelt in his first message to Congress after the 1904 election became an advocate of a federal publicity law. He recommended a law providing for "the publication not only of the expenditures for nominations and elections of all candidates, but also of all contributions received and expenditures made by political committees."[33] In his message to Congress a year later, Mr. Roosevelt expressed his views in regard to the use of campaign funds:

> In political campaigns in a country as large and populous as ours it is inevitable that there should be much expense of an entirely legitimate kind. This, of course, means that many contributions, and some of them of large size, must be made, and, as a matter of fact, in any big political contest such contributions are always made to both sides. It is entirely proper both to give and receive them, unless there is an improper motive connected with either gift or reception. If they are extorted by any kind of pressure or promise, express or implied, direct or indirect, in the way of favor or immunity, then the giving or receiving becomes, not only improper, but criminal. It will undoubtedly be difficult as a matter of practical detail to shape an act which shall guard with reasonable certainty against such misconduct; but if it is possible to secure by law the full and verified publication in detail of all the sums contributed to and expended by the candidates or committees of any political parties, the result can not but be wholesome.[34]

Many Republican leaders, however, did not follow Mr. Roosevelt in his advocacy of a publicity bill. The position of this group was set forth by Mr. Bliss, treasurer of the Republican National Committee during the campaign of 1904: "During the years that I have served as treasurer of the committee I have considered the relations between the committee and the contributors as

[33] *Congressional Record*, 39 (1904), 17.
[34] *Congressional Record*, 40, 96.

confidential. I have persistently refused to make the accounts public. In my opinion, contributors have the same right to object to publication of their gifts that they have to cast a secret ballot at election time."[35]

The first federal publicity bill was introduced into the lower house of Congress January 12, 1906 by Representative McCall of Massachusetts. This bill contained the following provisions: (1) all contributions made to influence elections in two or more states must be made to political committees or agents; (2) without making an accounting to a political committee, a candidate might pay his expenses for traveling, printing and circulating letters and circulars, for stationery and postage, but all such expenses were limited to those directly incurred and paid by him; (3) each political committee was required to have a treasurer, who should keep a detailed statement of all receipts and expenditures made by the committee or any of its agents; (4) all payments of over five dollars must be receipted for by vouchers stating particulars of the payment; (5) treasurers of political committees operating in more than one state were required to file a certified statement with the clerk of the House of Representatives within thirty days after the election, giving a detailed account of all receipts and expenditures; (6) it was declared illegal for any person to make a contribution in any other name than his own; (7) any United States district or circuit judge was empowered to require this statement by order, or to inquire into the truth of any statement, on application of the Attorney-General, a district attorney, a candidate at the election, or any ten qualified voters; (8) the federal courts were given power to subpoena

[35] *Independent*, vol. 73, p. 1016.

witnesses who must testify, and immunity was granted to witnesses so testifying; (9) violations of this act were to be punished by imprisonment for one year, a fine of one thousand dollars, or both such fine and imprisonment.[36] This bill was referred to the Committee on Elections, and despite strong effort on the part of its proponents it remained there during the remainder of the fifty-ninth Congress.

The members of the sixtieth Congress were very much alive to the necessity of passing a publicity bill before the presidential campaign of 1908. On the opening day of the new Congress ten different publicity bills were introduced, and by May 1, 1908 fourteen more had been added. Mr. McCall's bill, introduced into the previous Congress, was among this number.[37] The McCall bill gained sufficient support among the Democrats and insurgent Republicans to make its passage possible. The Republicans now turned a parliamentary trick on the Democrats. The Crumpacker "force bill," designed to give the federal government control of all elections, including primaries, where representatives are voted for, and also cutting down Southern representation under the provisions of the Fourteenth Amendment was joined to the McCall bill. A warm partisan debate ensued in which attention was given to the negro question rather than to publicity for campaign funds. The entire Democratic strength was thrown against the McCall-Crumpacker bill,[38] but it

[36] *Congressional Record*, 40 (1906), 5614.

[37] Ibid., vol. 42 (1907-08), pt. 1, passim.

[38] The Democrats opposed the Crumpacker Bill because they did not wish the Federal Government to exercise the undoubted power given it by article 1, section 4 of the Constitution to regulate Congressional elections. If such a bill had been enacted, Federal officials would have had the power directly to prevent any limitations imposed by individuals on negroes voting

passed the lower house May 22, 1908 by a vote of 161 to 126.[39] The bill went to the Senate and was killed.

During the campaign of 1908 each party cited the Congressional struggle over the McCall-Crumpacker bill as evidence that it favored publicity for campaign contributions and expenditures. The Republicans cited the passage of the bill by Republican votes in the lower house and laid its defeat to obstructionist tactics by Democratic Senators.[40] The Democrats argued that the Crumpacker provisions had been added in order to bring about the defeat of the McCall bill.[41] The Republican National Convention, however, refused to put a plank in its platform calling for publicity of campaign contributions,[42] while the Democratic Convention endorsed such a provision in the following words: "We pledge the Democratic party to the enactment of a law preventing any corporation contributing to a campaign fund and any individual contributing an amount above a reasonable minimum, and providing for the publication before election of all such contributions."[43] At frequent intervals during the campaign the Democratic National Committee published all contributions made to it and the details of its expenditures. The treasurer of the Republican National Committee at the request of Mr. Taft, the Republican candidate for president,

in the Congressional elections. The provisions of the Crumpacker Bill cutting down Southern representation under the terms of the Fourteenth Amendment were probably only an empty gesture, for it has been shown that the Fifteenth Amendment forbids any state to deny or abridge the right to vote because of race or color. Evidently a state could not have its representation in Congress reduced for doing something it constitutionally cannot do.

[39] *Congressional Record,* 42 (1908), 6763.
[40] *Republican Campaign Text-Book,* 1908, p. 273.
[41] *New York Times,* July 10, 1908.
[42] Ibid., June 19, 1908.
[43] Ibid., July 10, 1908.

placed himself under the operation of the New York publicity law which required publication of contributions and expenditures after the election.[44]

In his first message to the sixty-first Congress, December 7, 1909, President Taft recommended the enactment of a publicity law, as follows:

> I urgently recommend to Congress that laws be passed requiring the candidates in elections of members of the House of Representatives and those in charge of their candidacy and campaign to file in a proper office of the United States Government a statement of the contributions received and expenditures incurred in the campaign, and that similar legislation be enacted with reference to all other elections within the control of Congress.[45]

Mr. McCall now introduced a bill differing somewhat from the one he had been urging on Congress since 1906. He now desired that statements be filed both before and after election and set forth the specific nature of the required statement. The statement was required to show (1) the names of all persons or firms advancing one hundred dollars or more; (2) the total sum received in amounts less than one hundred dollars; (3) the names of all persons to whom ten dollars or more had been paid, and the purposes of such payment; (4) the total sum disbursed in amounts less than ten dollars. In addition, every person, firm, or committee spending fifty dollars or more to influence an election was required to file this statement unless this money had been paid to a political committee.[46]

[44] Perry Belmont, *Abolition of Secrecy of Party Funds.* Sen. Doc. no. 495, 62nd. Cong., 2nd. Sess., p. 38. 1912.
[45] *Congressional Record,* 45 (1909), 33.
[46] Ibid., 45 (1910), 4927.

This bill was passed by the House April 18, 1910.[47] The Senate refused to concur in the provision requiring a pre-election statement.[48] The House accepted the change made by the Senate, and the first federal publicity bill became a law June 25, 1910.[49]

The Democrats were in control of the lower house in the sixty-second Congress, and on the first day of the new Congress Mr. Rucker offered an amendment to the McCall bill providing for a pre-election statement. This amendment passed the House.[50] The Senate Committee now not only accepted the Rucker amendment, but added another amendment that candidates for Representative should file a statement of their expenses in both the primaries and elections. This evoked a debate over the power of Congress to regulate primaries. Senator Bailey denied the existence of this power, saying: "The Constitution of the United States expressly authorizes Congress to regulate the times, places, and manner of electing Senators and Representatives in Congress, but there is no suggestion in any clause of the Constitution that Congress has the power to regulate the party processes by which its candidates are nominated. . . . When the Constitution was written no such method as the primary was known."[51] This statement is noteworthy since it is substantially the same line of reasoning that the Supreme Court later followed in the Newberry case. Senator Lodge contended that "Under the general power of the Constitution we are undertaking to supervise the expenditure

[47] Ibid.
[48] Ibid., p. 8753.
[49] *United States Statutes at Large*, 36, 392.
[50] *Congressional Record*, 47 (1911), 269.
[51] Ibid., p. 2310.

of money in an election. The expenditure of money is merely incidental; it is neither the time, place, nor manner, but it is purely incidental to the election. Is it not true that the money spent in the primaries is just as incidental to that election as the other?"[52]

The Senate accepted its committee's report containing the Rucker bill with the added amendment requiring candidates for the Senate and the House to file statements of nomination and election expenses. New amendments were also added providing that no candidate for Senator should spend more than ten thousand dollars in his campaign for nomination and election, nor a candidate for the House more than five thousand dollars, but no candidate could spend more than was lawful under the laws of his state.[53] The House accepted these amendments after a long debate on states rights and reconstruction, and the amendments became law August 19, 1911.[54]

Since these amendments to the act of 1910 contain the most important provisions enacted by Congress to regulate the use of money at elections, it is well to summarize them. Detailed statements of receipts and expenditures were required to be filed by the treasurer of such committee which was engaged in activities in two or more states the purpose of which was to influence an election at which Representatives in Congress are to be elected. These statements were required to be filed not more than fifteen days, nor less than ten days before such election, and on each sixth day thereafter until the election. A final statement must be filed within

[52] Ibid.
[53] Ibid., p. 3020.
[54] Ibid., p. 4333.

thirty days after the election. Every candidate for Representative was required not less than ten nor more than fifteen days before both the primary and general election to file with the clerk of the House an itemized statement of all things of value received by him or by any one for him, with his knowledge and consent, from any source in aid of his candidacy, with the names of those furnishing such aid. This statement must also contain a detailed report of expenditures, with the names of those to whom payments had been made. A candidate for the Senate was required to file a similar statement with the Secretary of the Senate before a primary or nominating convention, or an election at which he was seeking endorsement, and not less than five nor more than ten days before the day upon which the first vote was to be taken by the legislature. Within fifteen days after the primary and thirty days after a general election, or an election by the legislature, final statements must be filed by candidates for both houses. No candidate was to be permitted to spend more than the law of his state provided for, but no candidate for Representative was allowed to spend more than five thousand dollars in his campaign for nomination and election, nor a candidate for Senator more than ten thousand dollars. Money expended, however, to meet any fees required by state law, for necessary personal expenses incurred for himself alone, for travel and subsistence, stationery, postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, was not to be regarded as an expenditure in the meaning of the amendment and need not be shown in the

statements required to be filed. Punishment by fine or imprisonment, or both, was provided for any violation of these sections.[55]

On August 23, 1912 another amendment to the Act of 1910 was passed.[56] This amendment was of no great importance. It was merely explanatory of the method by which the statements of campaign collections and expenditures should be filed.

During 1912 several other bills regulating campaign contributions and expenditures were introduced into Congress but did not become laws. March 18, 1912 Senator Culberson proposed a measure making it unlawful for any person to contribute more than five thousand dollars in any election where presidential electors or Representatives in Congress were to be chosen, or at any election by a state legislature of a United States Senator.[57] December 7, 1912 Senator Clapp introduced a bill prohibiting the sending of campaign funds from one state to another. This bill, however, did not apply to the payment of bills incurred by a national campaign committee in sending out speakers and literature, nor did it apply to campaign funds raised for and sent to a national committee, when these funds were properly reported as required by law. This bill passed the Senate, but the House took no action on it.[58]

Most serious discussion of further legislation regulating the use of campaign funds took place during 1915 and 1916 in the sixty-third and sixty-fourth Con-

[55] *United States Statutes at Large*, 37, 25.
[56] Ibid., p. 360.
[57] *Congressional Record*, 48 (1912), 3547.
[58] *Congressional Record*, 49 (1912), 252.

gresses. A bill containing the following provisions was passed by the House in the sixty-third Congress: (1) all committees receiving or expending any money for the purpose of influencing the result of a primary or an election at which candidates for President, Vice-President, or Representative are to be nominated or elected were required to file a statement with a federal official, even though these committees operated in only one state; (2) all persons spending more than fifty dollars must file a statement; (3) committees were forbidden to spend more in any state than had been contributed by citizens of that state; (4) the maximum expenditure of a Senator in his campaign for nomination and election was reduced to five thousand dollars, and of a Representative to two thousand, five hundred dollars. Expenses for printing, writing, stationery, postage, and traveling expenses, however, need not be included in this sum; (5) candidates for president were limited to an expenditure of fifty thousand dollars, and for vice-president to twenty-five thousand dollars.[59] The Senate committee added provisions prohibiting a single contribution of more than five thousand dollars, limiting the expenditures of national committees in the election of presidential electors to four hundred thousand dollars, and requiring that expenditures of national committees must be made with the consent of the candidates in whose interest the expenditure was made.[60] Republican Senators conducted a successful filibuster against the bill, and it did not reach a vote at this session of Congress. At the opening of the next

[59] Ibid., 53 (1915), 10983.
[60] Ibid., 13112.

session Senator Penrose introduced amendments to the bill incorporating the provisions of the "force bill" repealed in 1894.[61] The bill was then dropped.

There was very little discussion of corrupt-practices legislation by Congress for the next few years. The next law regulating elections was enacted October 16, 1918 when Congress strengthened the state prohibitions against bribery at elections by passing an act penalizing the giving or acceptance of a bribe for the influencing of votes for or against any candidate for Senator, or Representative, or Delegate, in Congress at any primary or general election.[62]

A proposal for checking large campaign contributions was presented to the Senate by Senator Thomas, December 23, 1918. His scheme was to levy a one hundred per cent. tax on contributions of more than five hundred dollars made to influence elections at which Senators, Representatives, and presidential electors are voted on. All committees receiving such contributions were by this bill required to file statements with the district collector of internal revenue.[63]

Senator Borah, March 26, 1920, introduced a bill dealing with the use of funds in the campaigns for the nomination for President and Vice-President. This bill provided that no candidate for the nomination for President either directly or through a committee should spend more than ten thousand dollars in any one state. Personal traveling expenses, stationery, postage, circulars, and telegraph and telephone charges were exempted from this limitation. A candidate was not to be

[61] Ibid., 54 (1916), 1323.
[62] *United States Statutes at Large*, 40, 1013.
[63] *Congressional Record*, 57 (1918), 778.

held responsible for expenditures made by political committees after he had publicly protested against them. Any one making a contribution of over one hundred dollars toward a campaign for the presidential nomination was required to file a statement with the Attorney-General, and every candidate was required to file an itemized statement fifteen days before and thirty days after the nominating convention.[64] No action was taken on this bill.

The Supreme Court was not called on to interpret the act of June 25, 1910, with its amendments of August 19, 1911 until 1921, when it handed down its opinion in the Newberry case.[65] Mr. Newberry, with a number of his supporters, had been found guilty by the Michigan District Court of expending more money in his campaign for the Republican nomination for Senator and in the final election to that office than the amendment of 1911 permitted. Mr. Newberry filed a statement that no contributions had been received or disbursements made with his knowledge and consent. The treasurer of his campaign committee filed a statement showing receipts and expenditures of almost two hundred thousand dollars. An indictment was brought against Mr. Newberry and one hundred and thirty-three others which set forth at great length that these men had entered into a conspiracy to give, contribute, spend, and use, and to cause to be given, contributed, expended, and used in Mr. Newberry's campaign for the nomination and final election sums greatly in excess of the maximum amount permitted by law. The Michigan District Court found Mr. Newberry and sixteen

[64] Ibid., 59 (1920), 4853.
[65] Newberry *v.* United States, 256 U. S. 232, 1921.

other defendants guilty, and an appeal was then made to the United States Supreme Court. The appeal was made on the grounds of error in the District Court's instructions to the jury, and on the further grounds that the act under which the indictment was brought was unconstitutional in so far as it applied to primary elections.

The Supreme Court gave a unanimous opinion that the decision of the District Court should be reversed because of the error in instruction to the jury. But there was a decided division of opinion concerning the constitutionality of the act. Four members of the Court, speaking through Mr. Justice McReynolds, found the acts of 1910 and 1911 unconstitutional in so far as they applied to primaries. Mr. Justice McKenna concurred in this opinion in regard to Senatorial primaries, since these acts had been passed before the adoption of the Seventeenth Amendment providing for the direct election of Senators. Justice McKenna gave no reasons for his opinion, but he was probably concurring in Justice McReynolds statement that "The criminal statute now relied upon antedates the Seventeenth Amendment and must be tested by powers possessed at the time of its enactment. . . . An after acquired power can not *ex proprio vigore* validate a statute void when enacted." Justice McKenna reserved his opinion on the power of Congress to regulate Senatorial primaries after the adoption of the Seventeenth Amendment. Chief Justice White and Mr. Justice Pitney in separate opinions concurred in the reversal of the decision on the grounds of error in instruction by the lower court, but they denied the unconstitutionality

of the laws in question. Justices Brandeis and Clark concurred in the opinion of Justice Pitney.

Justice McReynolds, in delivering the majority opinion, said:

> The ultimate question for solution here is whether under the grant of power to regulate "the manner of holding elections," Congress may fix the maximum sum, which a candidate therein may spend, or advise and cause to be contributed and spent by others to procure his nomination. . . . We find no support in reason or authority for the argument that because the offices were created by the Constitution, Congress has some indefinite, undefined power over elections for Senators and Representatives. . . . The Seventeenth Amendment, which directs that Senators be chosen by the people, neither announced nor required a new meaning of election, and the word now has the same general significance as it did when the Constitution came into existence,—final choice of an officer by the duly qualified electors. Primaries were then unknown. Moreover, they are in no sense elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors. . . . We cannot conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of power to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the power expressly granted. On the other hand, its exercise would interfere with purely domestic affairs of the state, and infringe upon liberties reserved to the people.[66]

Justice Pitney's argument upholding the power of Congress to limit the amount that may be spent in the campaigns for nomination to Congress was much

[66] Newberry *v.* United States, 256 U. S. 232 passim. 1921.

clearer and stronger than was Justice McReynold's denying this power. He said:

It is contended that Congress has no power to regulate the amount of money that may be expended by a candidate to secure his being named in the primary election; that the power to regulate the manner of holding elections relates solely to the general elections where Senators or Representatives are finally chosen. Why should "the manner of holding elections" be so narrowly construed? An election is the choosing of a person by vote to fill a public office. In the nature of things it is a complex process, involving some examination of the qualifications of those from whom the choice is to be made; . . . and some method of narrowing the choice by eliminating the candidates until one finally secures the majority. . . . For the process of elimination, instead of tentative elections participated in by all the electors, nominations by parties or groups of citizens have obtained in the United States from an early period. . . . In the essential sense, a sense that fairly comports with the object and purpose of a constitution such as ours, which deal in broad outline with matters of substance, . . . all of the various processes above indicated fall fairly within the definition of the manner of holding elections. . . . It is said primaries were unknown when the Constitution was adopted. So were the steam railways and the electric telegraph. But the authority of Congress to regulate commerce among the several states was extended over these instrumentalities, because it was recognized that the manner of conducting commerce was not essential.[67]

It will be seen from these excerpts from the opinions of Justices McReynolds and Pitney that they were enunciating a widely different principle. Justice McReynolds held that article 1, section 4 of the Constitution giving Congress the power to make or to alter state regulations concerning the times, places, and manner of holding elections for Senators and Representa-

[67] Ibid.

tives should be very narrowly construed,—that the term election still has the same meaning, and no more, that it had in 1789. Justice Pitney, on the other hand, was stating the principle that the term could not be narrowly confined to its meaning when the Constitution was drafted. Changed conditions had given the word an added meaning. But Justice Pitney further held that if the term election must be narrowly defined, Congress would still have the power to regulate primary elections under the constitutional provision giving Congress authority "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers. . . ." He argued that under this provision the Congressional statute regulating the use of money in connection with nominations should be upheld, since, for an effective control of elections, it is necessary that Congress control the primaries as well as the final elections. It would seem that Justice Pitney's more liberal construction of the constitution is the better one where a question so important as Congressional control of the purity of elections of its own members is at issue.

After this decision by the Supreme Court, no further action was taken in the courts against Mr. Newberry. The Senate, however, under its constitutional power to judge of the elections, qualifications, and returns of its members, investigated the charges against Mr. Newberry. The Senate discussion centered about the question: Were the excessive campaign expenditures carried on with the knowledge and consent of Mr. Newberry?[68] On January 12, 1922 the Senate by a vote of forty-six to forty-one finally declared Mr. Newberry

[68] *Congressional Record,* 61 (1921-22), passim.

duly elected and entitled to a seat in the Senate. Curiously enough, the Senate added to its declaration that Mr. Newberry was entitled to his seat a resolution condemning the excessive use of money made during his campaign. This resolution stated

> That whether the amount expended in this primary was one hundred and ninety-five thousand dollars, as was fully reported and openly acknowledged, or whether there were some few thousand dollars in excess, the amount expended was in either case too large, much larger than ought to have been expended. The expenditure of such excessive sums in behalf of a candidate either with or without his knowledge and consent, being contrary to sound public policy, harmful to the honor and dignity of the Senate, and dangerous to the perpetuity of a free government, such excessive expenditures are hereby severely condemned and disapproved.[69]

This resolution has the suspicious appearance of an attempt by the Senate to save its face.[70]

The opinion of the Supreme Court in the Newberry case was a severe blow to federal regulation of campaign expenditures. Under this decision Congress can exert no control over the use of funds in a campaign for party nomination. In many states a nomination is equivalent to an election. In such states, then, any regulation of the real election must be made by the states. The national government is entirely dependent here upon the state governments for the protection of the purity of the election of officers of the national government.

Under this decision the federal laws dealing with the use of campaign funds are only applicable to money

[69] Ibid., 62 (1922), 1306.

[70] Mr. Newberry later resigned from the Senate. See page 271 for a discussion of this resignation.

spent to influence final elections, and under an opinion of Attorney-General Daugherty candidates for United States Senator were not bound by these regulations.[71] Judge Van Fleet, sitting in the district of Arizona, made the same ruling in the matter of the indictment of Senator Cameron for failing to file a true statement in connection with his campaign for the Senate.[72] These two opinions were based on the fact that the acts of 1910 and 1911 were passed prior to the constitutional amendment providing for the popular election of Senators, and, therefore, do not apply to such popular elections. It will be noticed that these opinions are identical with the stand taken by Justice McKenna in the Newberry case.

The effect of the Newberry decision in a matter very different from the regulation of the use of campaign funds soon was seen. Two years after this decision Texas passed a law making it illegal for a negro to participate in a Democratic primary.[73] The constitutionality of this statute was immediately attacked on the grounds of conflict with the Fourteenth and Fifteenth Amendments to the Federal Constitution. In the case of Chandler *v.* Neff,[74] District Judge West of the Western District of Texas held that

> The answer to the question is practically found in the answer to the question as to whether or not a primary election is that character of election that comes within the meaning of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. . . . The balancing of authorities, and the

[71] Letter from Assistant Attorney-General J. W. H. Crum, June 22, 1922.
[72] U. S. *v.* Cameron, 282 Fed. 684, 1922. This opinion had been implied in the earlier case of U. S. *v.* Gradwell, 243 U. S. 476, 1916.
[73] Laws, 1923, chap. 32.
[74] 298 Fed. 515, 1924.

weight of authority, if in doubt, is settled by the Supreme Court of the United States in Newberry *v.* United States. It was there held that primary elections "are in no sense elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors. It therefore may be considered as determined that the State of Texas was within its powers in providing its tests of qualification of Democratic electors. . . . The Fourteenth Amendment guarantees privileges and immunities which the states are forbidden to deny or abridge, which are such as depend immediately on the Constitution of the United States, and which refer to citizens of the United States in that relation and character, and not such rights as accrue from state citizenship. Privileges and immunities are only such as owe their existence to the federal government, its national character, its Constitution or its laws. From the allegations of plaintiff's petition it is apparent that the immunity and privilege which he claims is denied him is his right to vote in the Democratic primary election. The authorities quoted amply demonstrate the Constitution of the United States did not intend to include such a right in the words privileges and immunities.

A decision in this case has not been handed down by the United States Supreme Court, but in the case of Nixon *v.* Herndon,[75] in which the validity of this same statute was attacked, the Supreme Court declared the law unconstitutional. The plaintiff in this case also contended that this Texas statute was in violation of both the Fourteenth and Fifteenth Amendments to the United States Constitution. Mr. Justice Holmes speaking for the court said:

We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth. . . . That Amend-

[75] U. S. Supreme Court, Adv. Opin., 1926-27, p. 507. Decision handed down March 7, 1927.

ment not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any state the power to withhold from them the equal protection of the laws. . . . What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons whether colored or white, shall stand equally before the laws of the states . . . ? The statute of Texas in the teeth of the prohibitions referred to, assumes to forbid negroes to take part in a primary election . . . , discriminating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case.

It will be noticed that in this opinion Mr. Justice Holmes did not deem it necessary to test the validity of the statute in the light of the Fifteenth Amendment. There was, therefore, no discussion of whether the present Court considers the primary an integral part of the election process or not. It may well be that the Court was glad that it was not necessary to decide this question. It was sufficient to set aside the law as an unconstitutional discrimination because of race and as an unconstitutional denial of the equal protection of the laws without considering whether there was also a denial of the right to vote because of race, color, or previous condition of servitude.

It is interesting to note that after the Supreme Court's decision in this case the Texas legislature superseded this invalid primary regulation with a statute which declared that "Every political party in this state through its state executive committee shall have the power to prescribe the qualifications of its members, and shall in its own way determine who shall be quali-

fied to vote or otherwise participate in such political party." This statute was similar to laws already in operation in Florida, Alabama, Louisiana, and Tennessee.[76] The Democratic Executive Committees of these states probably work under cover in excluding negroes from the party primaries. But if it could be shown to the United States Supreme Court that any of their regulations are discriminatory against negroes, evidently the Court would have to declare the statutes giving the committees the power to make these discriminatory regulations illegal, for the Court could scarcely sanction the delegation of a power by a state legislature when the exercise of that power by the legislature itself is unconstitutional.

Contrary to the belief of some, the decision of the Supreme Court in the case of Nixon *v.* Herndon was not a reversal of its opinion expressed in the Newberry case that a primary is not part of the election process. As has been shown, the Court felt no need of considering this question in the Texas case. The opinion expressed in the Newberry case still stands, and at the present time, therefore, by judicial interpretation the national government has no direct control over anything pertaining to a primary, except to prevent the discriminations forbidden by the Fourteenth Amendment, for to the national government, a primary is not an election. All control over this very vital part of the elective machinery is in the hands of the states. The importance of this to the federal government is apparent, since in at least one-fourth of the states primary selec-

[76] J. E. Pate, "The Texas White Primary Law," *Nat. Munic. Rev.*, 16 (1927), 617.

tion is equivalent to election, and in these states the federal government cannot directly interfere to regulate the actual elections of its own members of Congress. It will be pointed out later, however, that Congress is attempting to exert an indirect regulation of primaries at which candidates for Congress are nominated under the Constitutional provision which gives each house the right to decide upon the elections and qualifications of its members. But at best this sort of control is unsatisfactory, for it involves an investigation in each case with the probability that the decisions will be due to party influence.

The sixty-eighth Congress, which convened in December, 1923, was very keenly alive to the necessity of putting the federal corrupt practices legislation on more solid ground. Many pages of volumes 65 and 66 of the *Congressional Record* were filled with discussion of the effect of the Newberry decision on the status of the corrupt practices acts. Several members of each house felt that the constitutionality of all parts of the Acts of 1910 and 1911 was dubious since the Supreme Court had declared certain portions of them invalid.[77] Evidence before the Walsh Committee investigating the naval oil-reserve leases also made the need for some changes in campaign fund regulation apparent. This evidence showed that both Mr. Sinclair and Mr. Doheny had contributed to the campaign funds of each of the two large parties.[78] Most of these gifts had been

[77] *Congressional Record,* vol. 65 (1923), passim, especially pp. 6519-25, 8328-31, 9506-15, 10324-28, 11131-39.

[78] *Hearings Before the Senatorial Committee Investigating the Naval Oil Reserve Leases,* Sen. Rep. 794, 68th. Cong., 1st. Sess., 1924, passim. Cf. Mark Sullivan, "Cash in Campaigning," *World's Work,* 48 (1924), 430. Mr. Will H. Hays, the chairman of the Republican National Committee dur-

made to meet deficits of the party committees, and under the Acts of 1910 and 1911 such gifts were not required to be reported by the party committees.

Several bills concerning campaign contributions and expenditures were introduced into the sixty-eighth Congress which received scant consideration. Representative Moore of Virginia proposed as an amendment to the Revenue Act of 1924 that every person making a return under the Revenue Act should therein specifically designate any contribution he had made for the purpose of influencing the election of President, Vice President, Congressman, or Senator, provided such contributions exceeded one thousand dollars.[79] Attempts were also made in one case to amend the Revenue Act by taxing all contributions of over $5,000 fifty per cent.,[80] and in another by taxing all contributions of over $1,000 one thousand per cent.[81]

More serious discussion took place over a very radical and thorough-going bill introduced by Senator McKel-

ing the campaign of 1920, testified before this Walsh committee in 1924 that Mr. Sinclair had contributed $75,000 toward meeting the deficit of $1,350,000 incurred by the Republicans in the 1920 campaign. But just as this manuscript is going to the printer Mr. Hays has admitted to the public lands committee of the Senate, which is investigating the financial manipulations of the Continental Trading Company, that in 1923 Mr. Sinclair gave him $260,000 in Liberty Bonds to be used in liquidating the Republican deficit. Mr. Hays testified that he later returned $100,000 to Mr. Sinclair, but even with this refund, the Sinclair contribution to meet the deficit amounted to $160,000 rather than the $75,000 which Mr. Hays had originally stated. Mr. Hays attempted to conceal this Sinclair contribution by turning over to certain prominent Republicans the Liberty Bonds which Sinclair had given him to help meet the deficit. These prominent Republicans then made a contribution equal to the amount of the Liberty Bonds which they had received. It is interesting to note that Secretary Mellon refused to become a party to such a transaction, but, on the other hand, he did nothing to help the Walsh Committee in tracing the Bonds. It was only through the able work of the Walsh Committee that the use of the "dummy contributors" was discovered. (See the *New York World* from March 1 to March 20, 1928, for the news account of the testimony before the Walsh Committee.)

[79] *Congressional Record,* 65 (1924), 2948.

[80] Ibid., p. 3271.

[81] Ibid., p. 6456.

lar. Section one of this bill declared it unlawful for any corporation or firm to make any contribution in connection with any election at which presidential electors, a Representative, or a Senator was to be voted for. Section two made it unlawful for any person to contribute more than $500 toward the election of presidential electors, or more than $100 toward the election of a Representative or Senator, and no person was to contribute to more than one political party. Sections three, four, and five limited the contributions of a candidate for President to $10,000, exclusive of personal and traveling expenses, and the contributions of a candidate for Senator and Representative to $5,000 and $3,000 respectively. The aggregate sums that could be spent in the campaign of a Senator and Representative were $10,000 and $5,000. Section six declared it unlawful for any person to contribute to the election of a candidate for Representative or Senator outside the state in which such person was a citizen. Section seven limited the expenditure of any national committee to $1,000,000. Expenditures and contributions were to be reported as under the Acts of 1910 and 1911. Section eight declared it unlawful for any national committee, after the election was over, to collect from any source anything in excess of the one million dollars. It was finally declared unlawful for any state or district committee to spend money in behalf of presidential electors. Penalties of fine and imprisonment were set up.[82]

Although no action was taken on this bill, the summary of its provisions is important since it contains the sort of regulation that a large number of people would like to see enacted. Some of its provisions, such

[82] Ibid., p. 6519.

as section one, were similar to federal legislation already in force. Certain of its provisions, such as the one prohibiting an individual to contribute to more than one party, are clearly praiseworthy. The chief point of contention is over the provisions limiting gifts to $500 in a presidential contest and to $100 in an election for a Member of Congress. If such a provision could be enforced, the advisability of this low limit is doubtful. The one million dollar limit on the expenditure of a national committee is probably a mistake. In any hard fought presidential campaign the legitimate expenses would exceed this amount, and such a provision would only lead to its constant violation. The section making it illegal for state and district committees to spend money in behalf of presidential electors is absurd. Since, in general, state elections take place at the same time as national elections, campaigns are waged to get voters to support the party ticket, both state and national. It would be impossible so to divide these expenditures as to have this section enforced. There is justification for the attempt to prevent contributions from one state being sent into another, but under the provisions of this bill the national committee might collect all of its million dollars in one state and spend it where it wished. The discussion of the constitutionality of Congressional regulation of campaign funds used in connection with a presidential election is reserved for the end of the chapter.

Senator Borah initiated the next fight in the sixty-eighth Congress for the enactment of further corrupt-practices legislation. On May 26, 1924 he introduced an amendment to the postal pay-increase bill providing that all committees, parties, or persons having any part in

the election of Members of Congress or officials of the Government of the United States should publish at the end of each ten days a financial report of the contributions received by such committee, parties, or persons, with the name, residence, and official position of each contributor and the amount of his contribution, and at the end of each campaign should publish a complete and detailed financial statement, with the amount of any deficit incurred in the campaign, and that such committee or party should thereafter publish at the end of each month the amounts received by it from each contributor to make up the deficit. These statements, together with copies of circulars used in soliciting contributions and the names of all solicitors, were to be filed with the Clerk of the House and the Secretary of the Senate and be open to inspection by the public. A penalty of fine and imprisonment for any violation of the provisions of the bill was attached.[83]

In supporting this bill, Senator Borah said he depended more upon full publicity to remedy the evils connected with the excessive use of campaign funds than on more detailed restrictions on the size of such funds. The bill passed the Senate by the vote of 55 to 0.[84]

The House refused to accept the Borah amendment, substituting for it a measure prepared by Representative Cable of Ohio. This Cable substitute was entitled the Federal Corrupt Practices Act of 1924. It repealed the previous separate corrupt-practices acts, and then, in so far as these previous separate acts were held to be consistent with the Newberry decision they were now codi-

[83] *Congressional Record*, 65 (1924), 9516.
[84] Ibid.

fied into one comprehensive bill. In addition a few new provisions deemed desirable were incorporated.

To make sure of its constitutionality, the Cable bill stated definitely that the term election as used in the bill did not refer to a primary election or a convention of a political party. The same provisions of the original publicity acts of 1910 and 1911 in regard to the filing of statements were placed in the bill. An additional publicity requirement was that these statements must be filed not only at specified times before and after elections, but also four times during the course of each year. The purpose of this was primarily to insure publicity for contributions made to meet deficits. Every person other than a political committee or candidate who should make expenditures of fifty dollars or more within a calendar year for influencing elections in two or more states was also required to file these statements. The previous restrictions on the amount of expenditures permitted a candidate for Senator or Representative were made more elastic. Unless the laws of such candidate's state prescribed a less amount, he could now spend three cents for each vote cast at the last election for the office for which he was a candidate, providing such expenditure did not exceed $25,000 for a Senator, or $5,000 for a Representative. This provision recognized that the candidate in a more populous state should be allowed to spend more than the candidate in a small state. As in the previous acts certain expenditures such as those for personal traveling expenses, stationery, postage, printing, distributing circulars, telephone and telegraph charges were not to be included in this prescribed limit. Finally, this bill included provisions of earlier acts making it unlawful to promise employment

to gain political support; to offer or give a bribe to influence votes, or to accept one; for any officer or employee of the United States to solicit or receive political contributions from any such officer or employee; and for any corporation incorporated under national laws to contribute to any election, or any corporation to contribute to the elections of President, Vice President, Senators, and Representatives.[85]

The conference committee from the two Houses accepted the Cable bill, and it was passed by both Houses.[86] For the time, however, the bill met its death when President Coolidge vetoed the postal pay-increase bill. In his veto message, the President said: "If the provision stood alone, I should approve that part of the bill relating to campaign funds."[87]

Upon the introduction of a new postal pay-increase bill into the second session of the sixty-eighth Congress, Senator Walsh of Massachusetts, January 29, 1925, proposed the Cable bill as an amendment.[88] The report of the Borah Committee covering the investigation of expenditures in the campaign of 1924 was made February 12. This committee placed the Cable bill in the body of its report and strongly recommended its enactment.[89] The bill was again passed by both Houses, and this time Mr. Coolidge approved the postal pay-increase bill. On February 28, 1925, the act now known as the Federal Corrupt Practices Act of 1925 was placed on the statute books.[90]

[85] *Congressional Record*, 65, 10328.
[86] Ibid., p. 11017.
[87] Ibid., p. 11128.
[88] Ibid., 66 (1925), 2703.
[89] Senate Report no. 1100, 68th Cong., 2nd Sess., p. 35.
[90] Fed. Stats. Anno., Sup. Pamph., April, 1925, p. 37, published by Edward Thompson and Co.

It is impossible at the present time to draw any conclusions from the operation of the Act of 1925. In several respects it apparently should remedy some of the weak points in previous federal legislation. The provision calling for publicity of contributions and expenditures several times each year is undoubtedly its greatest forward step. The provision of the Act requiring all persons who make expenditures of fifty dollars or more during a calendar year to file statements is to be commended. In addition, the more flexible limitation on expenditures by candidates for Congress is well justified. The Borah Committee, although strongly recommending the enactment of the Cable bill, felt that this particular provision should be made more flexible, stating that it could not be deemed wise or just to put the same limit on a candidate for Senator in a state with a population of one million, as in a state with a population of seven million.[91] The only other suggestion of the Borah Committee for legislation which was not embodied in the Cable bill was for some act to prevent the collecting of large sums in certain states and the sending of such sums into other states to be used in influencing elections.[92]

The Federal Corrupt Practices Act of 1925 provides probably about all the regulation of elections that the Federal Government should attempt at the present time. Its glaring weakness is in its definition of "election." The elimination of primaries from the control of Federal Corrupt Practices Acts is, of course, due to the Newberry decision, but it is unfortunate that Congress did not make one more attempt to exert control over

[91] Senate Report, no. 1100, 68th Congress, 2nd Sess., p. 38.
[92] Ibid.

primaries as well as over final elections. It is by no means certain that the Supreme Court would adhere to its opinion that Congress has no control over primaries. As was shown in the discussion of this decision, a majority of the Court did not concur in this opinion of unconstitutionality. Justice McKenna only concurred in the opinion in so far as it applied to Senatorial primaries. The repassage of the provisions of the Acts of 1910 and 1911, putting them in line with the Seventeenth Amendment might possibly have placed Justice McKenna in agreement with the four members of the Court who upheld the power of Congress to regulate primaries. The great change in the personnel of the Supreme Court is an additional reason why Congress should seek another expression of opinion on the constitutionality of this important phase of election control. Congress should at the earliest possible time enact a separate law containing provisions similar to those in the Act of 1925 which will apply to primaries. If the Supreme Court again declares such control unconstitutional, nothing will be lost, for the Corrupt Practices Act of 1925 would still be in force regulating final elections.

The question of the constitutionality of the various provisions of the Federal Corrupt Practices Act of 1925 presents an interesting issue. As has been pointed out, its main provisions which require the filing of statements of campaign contributions and expenditures by certain designated political committees and by candidates for the Senate and the House, and which limit the expenditures of candidates for the Senate and the House, are practically the same as those in the Acts of

1910 and 1911. Under what constitutional authority has Congress made these provisions? Article 1, section 4 of the Constitution, which provides that Congress may make or alter the times, places, and manner of the elections of Members of Congress, has been held to confer power upon Congress to exercise the widest control over these elections.[93] There is, therefore, no question concerning the constitutionality of Congressional enactments regulating the use of campaign funds in the final elections of Members of Congress.

There is, however, no authority for Congress directly to regulate the expenditure of money in the election of presidential electors, for these electors have been held to be state officers.[94] But the Act of 1925 states that the political committee required to file statements "includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of . . . presidential and vice presidential electors (1) in two or more states, or (2) whether or not in more than one State, if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization." Under what constitutional theory has Congress been working during its enactment of provisions of this sort?

In general, the constitutional question has not been considered. When the constitutionality of such a provision was mentioned at all, it was simply assumed that

[93] See chapter 6.

[94] *In re* Green, 134 U. S. 377, 1890. McPherson *v.* Blacker, 146 U. S. 1, 1892.

since Congress could control the elections of Members of Congress, and since these elections take place at the same time presidential electors are chosen, Congress could control the election of these electors by indirection.[95] But the definition of political committee in the Act of 1925 refers directly to elections of presidential electors, and, therefore, it would seem that Congress cannot conceal the fact that it is not regulating the choice of presidential electors through its undoubted power over Congressional elections. It has been shown in chapter six[96] that the Supreme Court in the Blitz case called a halt to this exercise of indirect control over state elections by Congressional enactments on their face designed to regulate Congressional elections. This direct provision that political committees carrying on activities in connection with the election of presidential electors shall file statements of their contributions and expenditures would probably not be upheld by the courts.

The statement of the Acts of 1910 and 1911, and of the Act of 1925 that these committees required to file statements are those operating in more than one state, or subsidiaries of such committees, gives the impression that Congress felt it had the authority to make such regulations under its power over interstate commerce. But it is extremely doubtful if the courts would ever countenance these regulations as a proper exercise of Congressional control under the commerce clause of the Constitution.

[95] Statement of Representative Norris, *Congressional Record,* 45 (1910), 4929. Mr. Perry Belmont argues to the same effect in *Abolition of Secrecy of Party Funds,* Sen. Doc. no. 495, 62nd Cong., 2nd Sess., 1912. p. 59.
[96] Pp. 171-72.

As has been shown, the only time that the courts have ever made any statements concerning Congressional regulation of the use of funds in presidential campaigns was in the United States Brewers' Association case. In this case where the constitutionality of the statute prohibiting gifts by corporations to influence presidential elections was questioned, the court simply said that the problem did not arise in that particular case.[97]

The opinion must be reached that Congress has no constitutional power to regulate the use of funds in a presidential election. But it is almost certain that the validity of Congressional regulations requiring publicity for these campaign funds will never be contested. No political committee would want to risk injuring its party by such a step. A hostile public opinion, with a consequent loss of votes, would be feared. If Congress, however, should put limits on the amount a committee may spend, or enact some other stringent regulation concerning the work of the committee, there is a possibility that some political committee would seek to have such a regulation declared invalid, and it would probably be successful in the attempt. A decision of this sort would then make equally void regulations providing for publicity of contributions and expenditures used in connection with a presidential campaign.

The absence of Congressional regulation to control expenditures incurred in primary campaigns arose to plague the Senate in 1926. In the Pennsylvania Republican primary of that year a very bitter fight was carried on between the Vare and Mellon factions for

[97] See p. 220, above.

the control of the party in the state. Each faction had its ticket of candidates for nomination to the United States Senate and for the important state offices. Taking their names from the rival candidates for nomination for Senator and Governor, these tickets were known as the Pepper-Fisher and Vare-Beidleman. Both factions were well supplied with funds, and accounts of the lavish use of these funds to control the primary results were published throughout the country. Similar conditions arose in the Illinois Republican primary. Here one faction supported Senator McKinley for the Republican nomination for United States Senator, and the other supported Mr. Frank L. Smith, chairman of the Illinois Commerce Commission. Both factions were well supplied with money and spent it freely.

The Senate soon took notice of the claims that vast amounts were being expended to secure the Republican Senatorial nominations in these states, and on April 8, 1926 Senator Reed of Missouri introduced a resolution authorizing the president of the Senate to appoint a special select committee to investigate the means used to influence the nomination of any person as a candidate for the United States Senate or to influence the election of any person to the Senate at the November election.[98]

Some of the Senators denied the power of the Senate to investigate expenditures at primary elections. Senator Reed of Pennsylvania in pointing out this lack of power, said: "The Supreme Court of the United States in the Newberry case distinctly said that we

[98] *Cong. Rec.*, 67 (1926), 7096.

have no business to legislate on the subject of primary elections. If we have no business to legislate respecting primary elections, we certainly have no business to investigate them."[99] Senator Reed of Missouri, in arguing that the Senate had this power of investigation, held that the Supreme Court in the Newberry case had decided only that it was beyond the power of Congress to enact a penal statute applying to primary elections. The Supreme Court had not said, and the Senator believed it never would say, that the Senate does not have the right to protect the purity of the election of its members by passing on the qualifications of its members designate. Since the Senate has the constitutional right to pass on the qualifications, elections, and returns of its members, then the Senate has the right to know the methods by which a man asking to be seated in the Senate was nominated. To determine whether corrupt methods have been used in securing the nomination or election, the Senate has the right to carry on an investigation to see what the facts are.[100] By a vote of fifty-nine to thirteen the Reed resolution was agreed to on May 19, 1926,[101] and Senator Reed of Missouri was made chairman of the investigating committee.[102]

Before the investigations of the Reed committee were well under way attempts were made in both the House and the Senate to give Congress the power to regulate Congressional primaries or to set up a maximum for expenditures which if exceeded by any candidate would bar him from membership in the Senate.

[99] Ibid., p. 9676.
[100] Ibid.
[101] Ibid., p. 9678.
[102] Ibid., p. 9719.

On June 15 Representative Rubey introduced House Joint Resolution No. 279 providing for a constitutional amendment giving Congress the power to regulate primaries at which Representatives and Senators are nominated.[103] No action was taken on this resolution. On June 23 in the Senate, Senator Neely introduced Senate Resolution No. 257, later amended by Senate Resolution No. 268, which declared that any Senator elect shall be deemed to be disqualified from holding a seat in the Senate if an amount in excess of three cents for each vote cast for Senator at the last election, provided such sum is not in excess of $25,000, has been expended by such Senator elect, or by any person or persons for him with his knowledge and consent, in aid or support of the candidacy of such Senator elect, either in a primary election by which such Senator elect was nominated as a candidate for the Senate or in any general or special election at which such Senator elect is alleged to have been elected. As in the Federal Corrupt Practices Act of 1925, expenditures for certain designated purposes were not included in the maximum expenditures provided for by the resolution.[104] The committee on rules by unanimous vote gave a favorable report to this resolution, but Senator Blease was able to prevent its being acted on by the Senate. Senator Blease vehemently insisted that the Senate had nothing to do with party primary elections.[105] On January 31, 1928 Senator Neely again introduced this resolution,[106] but as yet no action has been taken on it.

[103] Ibid., p. 11338.
[104] Ibid., pp. 11826, 12080.
[105] Ibid., p. 12977.
[106] Ibid., 69, 2358.

On June 25, 1926 Senator La Follette introduced Senate resolution No. 261 as an amendment to the standing rules of the Senate. By the terms of this resolution no person would be entitled to a seat in the Senate unless within thirty days after the election he files with the Secretary of the Senate a statement of each contribution received by him or his campaign committee for the purpose of influencing primary election results. This statement must include the name of each person making a contribution and the amount contributed, and a detailed account of each expenditure made. The statement must be sworn to by the candidate and by his campaign manager or treasurer. All expenditures must be made under the personal direction of the candidate or his campaign manager. This La Follette resolution established the same maximum expenditures for primaries as had been established for final elections by the Federal Corrupt Practices Act of 1925. According to further provisions of the resolution, a committee of three was to be elected by the Senate to pass on the qualifications of each Senator elect. This committee was empowered to hold hearings and to report to the Senate on the first day of the session at which the Senator elect is designated to become a member of the Senate. To this resolution Senator La Follette attached a statement from the legislative counsel of the Senate that such an amendment to the Senate's rules would be within the Senate's constitutional power to pass on the qualifications and elections of its members. The resolution was referred to the committee on rules, and no action was taken on it.[107]

[107] Ibid., 67, 11961-2.

During the summer and autumn months of 1926 the Reed committee carried on intensive investigations of campaign expenditures in the Senatorial primaries of Pennsylvania and Illinois as well as in certain other states where complaints of abuses were brought to the attention of the committee. A report of the evidence taken in these investigations was presented to the Senate in December 1926.[108] In the course of its investigation the Reed Committee found that over $450,000 had been spent in the interest of the candidacy of Frank L. Smith, the successful candidate for the Republican Senatorial nomination in Illinois. To make matters worse, some $200,000 of this had been contributed by officers of public utility corporations, Mr. Smith being at the time chairman of the Illinois Commerce Commission, the body which regulated the rate making and services of public utilities in Illinois.[109] It was also brought out that about equal sums were spent on behalf of the candidacy of Senator McKinley for renomination. By far the larger part of these expenditures were made personally by Senator McKinley.[110] In its investigation of the Pennsylvania Republican primary the Reed committee found that $785,000 had been spent in support of the Vare-Beidleman ticket and $1,800,000 for the Pepper-Fisher ticket. It has been shown above that on each of these tickets there were candidates for nomination for the United States Senate and for the various important state offices. It was im-

[108] Hearings Before a Special Committee Investigating Expenditures in Senatorial Primary and General Elections, United States Senate, 69th Cong., 1st Sess., Pursuant to Sen. Res. 195. 5 parts (Reed Committee Report).

[109] Reed Committee Report, part 2, passim. *Cong. Rec.*, 69 (1927), 1.

[110] Reed Committee Report, part 2, passim.

possible for the committee to determine how much of these expenditures should be allocated to the candidates for the Senate. Governor Pinchot, the third candidate for the Republican Senatorial nomination, spent $187,000.[111]

Much time was given by the Senate from the time it convened in December, 1926 until the end of the short session in March, 1927 to the discussion of the findings of the Reed committee, of the question whether Smith and Vare should be permitted to take seats in the Senate, and of the meaning of Article 1, Section 5 of the Constitution which provides that "Each House shall be the judge of the elections, returns, and qualifications of its own members."[112] This discussion at first seemed only preliminary to the decision of the Senate of the 70th Congress, to which Vare and Smith were Senators elect. The death of Senator McKinley of Illinois, however, brought the matter to the immediate attention of the Senate of the 69th Congress, for Governor Small appointed Mr. Smith to fill Senator McKinley's unexpired term. The Senate by vote of forty-eight to thirty-three refused to permit Mr. Smith to take the oath of office and referred his case to the committee on privileges and elections.[113]

In addition to the charges growing out of the Reed Committee report concerning expenditures in Mr. Vare's campaign for the Republican nomination for Senator from Pennsylvania, Mr. W. B. Wilson, Mr. Vare's unsuccessful Democratic opponent in the general November election, entered formal notice of con-

[111] Ibid., passim, particularly part 1; *Cong. Rec.*, 69, 2, and 167-69.
[112] *Cong. Rec.*, 68, passim, esp. pp. 11920, 554, 558, 914, 1036-46, 5295-97.
[113] Ibid., p. 2014.

test of the results of the general election, charging that the registration books had been padded and that there had been corruption in the count of the votes.[114] This contest was referred to the committee on privileges and elections and is still pending.

The closing hours of the 69th Congress were enlivened by a bitter fight in the Senate over a resolution introduced by Senator Reed of Missouri extending the life of his special investigating committee through the 70th Congress and authorizing it to open any or all ballot boxes and to examine ballots cast at the general Pennsylvania election of 1926. A filibuster conducted by Senator Reed of Pennsylvania prevented the passing of this resolution.[115] After the close of the 69th Congress the Reed committee decided to continue its work, regardless of the fact that it had not been specifically authorized to do so. The committee decided that since the Senate is a continuing body the original resolution was sufficient authorization for the committee to continue its investigations. The committee, however, became involved in litigation which prevented it from accomplishing anything further before the 70th Congress convened in December, 1927.[116] The Senate of the new Congress immediately passed a resolution that the previous resolutions establishing the Reed Committee had been in full force since the time of their passage and that the committee was to continue functioning until the Senate accepted or rejected its final report, or until the Senate otherwise ordered.[117]

[114] Ibid., pp. 5895-6.
[115] Ibid., pp. 5477-5512.
[116] *Amer. Polit. Sci. Rev.*, 21 (1927), 303.
[117] *Cong. Rec.*, 69, 482.

The fight over seating Senators-elect Smith and Vare began with the administration of oaths to new Senators on the opening day of the 70th Congress. When the names of Smith and Vare were called, Senator Norris presented resolutions setting forth the amounts that had been expended in their campaigns for nomination, and in the case of Smith, the additional fact that he while chairman of the Illinois Commerce Commission had accepted contributions from public utilities officials. In the words of the resolution in the Newberry case, the Norris resolutions declared that these expenditures by Smith and Vare are "contrary to sound public policy, dangerous to the perpetuity of free government, harmful to the dignity and honor of the Senate, and taints with fraud and corruption" their credentials, so that they are not entitled to membership in the Senate.[118] At the suggestion of Senator Curtis, the Republican leader in the Senate, Smith and Vare stood aside while other Senators elect took the oath of office.[119]

The Senate spent most of the first week of the 70th Congress debating the Norris resolutions declaring that Smith and Vare were not entitled to seats in the Senate. The debate centered about the meaning of the constitutional provision that "Each house shall be the judge of the elections, returns, and qualifications of its members." The Senators favoring the seating of these two men argued that there could be no dispute concerning their elections and returns. That they had received the majority of votes at the elections, had been duly

[118] Ibid., pp. 1-2.
[119] Ibid.

certified by the governors of their respective states.[120] The question to be decided is, What is the meaning of "qualifications" in the constitutional provision? These Senators then argued that "qualifications" means those definitely stated in the Constitution—that no person shall be a Senator who is not 30 years of age, who has not been a citizen of the United States nine years, who is not an inhabitant of the state from which he has been chosen, who having previously taken an oath to support the Constitution of the United States shall have engaged in insurrection or rebellion against the United States, or who holds any office under the United States. It was argued that none of these apply to Smith and Vare and that the Senate has not the power to set up other qualifications. The Senate was not given the power to establish other qualifications, for such power would easily lead to tyranny by the majority. A majority could arbitrarily decide on some additional religious, political, or other qualifications. If the Senate exercised such power in the present cases it would be thwarting the will of the majority of the voters in two sovereign states, for these voters had known the charges against Smith and Vare at the time of the final election. It was argued, furthermore, that these expenditures by Smith and Vare were not contrary to the laws of their states, that there was no Congressional

[120] In the case of Mr. Vare the Senate had received two certificates of elections from governors of Pennsylvania. The first certificate issued by Governor Pinchot stated that on the face of the returns Vare appeared to have been chosen. Governor Pinchot said he could not use the ordinary form of certificate, "has been duly chosen," because he was convinced that Mr. Vare's nomination had been partly bought and partly stolen, and that fraud committed in Mr. Vare's behalf had tainted both the primary and general election. On the expiration of Governor Pinchot's term, the new governor, Fisher, issued to Mr. Vare a certificate of election in the regular form.

act or even statement of what is the maximum expenditure permissible. For Congress now to set up a maximum applicable to these men would be in the nature of *ex post facto* legislation.[121]

The case of the Senators opposed to seating Smith and Vare rested on the argument that there is no limit to the power of the Senate to judge of the elections, returns, and qualifications of its members. The requirements of age, citizenship, and residence are stated negatively in the Constitution, and are, therefore, disqualifications rather than qualifications. The language in which these disqualifications are stated clearly implies that they are not limitations on the separate constitutional provision giving each House the right to pass on the elections and qualifications of its members. Senators arguing for this wide power of the Senate to determine the qualifications of Senators designate admitted that the power might conceivably be abused. But they argued that so might any of the other powers vested in the Senate. If the exercise of authority be denied because it may be abused, there can be no government. These Senators denied that it was sufficient that the voters of Illinois and Pennsylvania had known the charges against Smith and Vare at the time of the final election. In states where one party is predominant, the candidate of that party will be chosen regardless of the way in which he received the nomination. Furthermore, the presence of a man in the Senate who has secured his nomination through corrupt expenditures

[121] *Cong. Rec.*, 69 (1927), 123-27, 166-70, 301-04, 326-37. See J. M. Beck, *The Vanishing Rights of the States*, for a thorough presentation of the arguments briefly set forth above.

is of more than state concern,—he votes on matters that pertain to all the states.[122]

To the writer it seems that the Senators who insisted that the Senate's power to determine the elections and qualifications of its members is limited to seeing whether the constitutional disqualifications are present in a particular case were too narrow in their definition. According to this theory, the Senate would have to accept a Senator designate's certificate of election regardless of any abuses that may have been known to have been present either in the primary or final election at which he was chosen. On the other hand, it seems equally impossible to go all the way with those Senators who argued there is no limit to the power of the Senate to pass on the qualifications of its members. It does not appear that the Senate has the right to inquire into anything which does not directly concern the election of a member. Affirmatively this would mean that the Senate has full power to pass on the method used in a campaign for party nomination as well as on the methods used to win the final election. To inquire into the past life of a Senator designate and to judge his qualifications on the basis of activities which had nothing to do with his seeking a seat in the Senate, it is believed would be an invalid assumption of authority by the Senate.

To meet the objections of Senators who believed that Smith and Vare should be given the oath of office so that they might defend their claims from the floor of the Senate, the Norris resolutions were amended. The cases were referred back to the Reed committee

[122] *Cong. Rec.*, 69 (1927), 112-19, 122-3, 154-7.

with instructions that Vare and Smith should be given such further hearings as they desired. After the committee made its final report, Smith and Vare were to be accorded the privileges of the floor of the Senate to defend themselves. In the meantime they were to be denied seats in the Senate. This amended resolution applying to Smith was passed by a vote of fifty-three to twenty-eight,[123] and the one applying to Vare by fifty-six to thirty.[124]

Carrying out the instructions of the Norris resolution, the Reed committee met on January 7, 1928 to give Mr. Smith such further hearing as he desired. Mr. Smith took the position that until he was sworn in as a member of the Senate no committee, nor even the Senate, had the power to pass on his qualifications, or to take any action relative to his claim to a seat. He, therefore, refused to take any part in the hearing. The committee then introduced a resolution into the Senate that Smith was not entitled to membership, and that a vacancy existed in the Illinois representation in the Senate.[125] Debate covering much the same ground as had that on the Norris resolutions followed for several days.[126] By a vote of sixty-one to twenty-three the resolution was passed January 19, 1928.[127]

Up to March 1, 1928 Mr. Vare has not presented his case before the Reed committee as was provided for by the Norris resolution. This is probably due to the fact that as an outgrowth of the contest of the results of the final election instituted by Mr. W. B. Wilson, the

[123] Ibid., p. 160.
[124] Ibid., p. 343.
[125] Ibid., p. 1641.
[126] Ibid., pp. 1641-54, 1766-80.
[127] Ibid., p. 1781.

Democratic candidate for Senator from Pennsylvania in 1926, the Senate committee on privileges and elections was then engaged in a recount of the votes cast in this election. But there is every reason to believe that the final action of the Senate in the Vare case will be the same as that in the Smith case—the Senate will refuse to permit Mr. Vare to be seated and will declare that a vacancy exists in the Pennsylvania Senatorial representation.

These two cases furnish abundant proof of the need of some action by which Congress may regulate directly the primaries at which candidates for the two Houses are chosen. Since Congress has felt the Newberry decision made direct regulation impossible, the Senate has reverted to an indirect method of regulation in the Smith and Vare cases. This method is extremely unsatisfactory, if not unfair. It is likely to prove unfair because there is no definite norm established to which a candidate must conform. It is unsatisfactory because there is always danger that decisions as to whether a man is entitled to his seat will be due to narrow party considerations, and because it is likely to make the voters of a state feel that the Senate is arbitrarily setting aside their decision.

The writer does not question the fact that Congress should regulate Congressional primaries, but other means than that used in the Smith and Vare cases should be employed. As is suggested elsewhere, the Newberry decision was not clean cut in its denial of the power of Congress to regulate primaries. Another expression of Supreme Court opinion should be obtained before Congress definitely gives up the attempt

at direct regulation. If a later Supreme Court decision should clearly make direct regulation impossible, then a proposal similar to those suggested by Senators Neely and La Follette should be adopted as an amendment to the rules of the two Houses. Such action would set up a definite standard with which the candidate would know he must comply. If the above suggestions prove inapplicable, Congress will be well justified in submitting to the states for ratification a constitutional amendment giving Congress the power to regulate primaries at which candidates for Congress are nominated.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

It has been the purpose of this study to survey the corrupt-practices legislation which has been enacted by the federal and state governments, and to examine the construction placed on these statutes by the various courts. It has been shown that although the more patent forms of corruption at elections—bribery, intimidation and fraud—were crimes at common law, most of the states in their earliest constitutions and laws made these offenses statutory crimes and that today all the states declare them illegal.[1]

Laws forbidding these direct forms of election abuse were possibly adequate in the earlier period of our country when the electoral machinery was not so vast and complicated, and the use of tremendous campaign funds was unknown. But the rapid industrial and commercial development of the country changed the situation. The growth of gigantic business enterprises and the simultaneous accumulation of great fortunes on the one hand, and the increase in the number of the propertyless class on the other, placed a tremendous strain on our attempt at a democratic form of government. The great mass of citizens, whether rich or poor, were too much interested in their material success to pay much attention to the problems of government. Great political machines gradually dominated the political life of the country, and these machines were, in turn, dependent on business for their financial

[1] See Tables 1, 2, 3.

support. Business men to secure governmental favors were willing to furnish the machine with funds, and the alliance between the political "boss" and industry was completed. With a bountiful supply of campaign funds, the political machines found it much easier to control elections.

To counteract this domination of government by the political machines many reform projects have been advocated. Among the schemes which have been proposed are nominations by direct primary, the Australian ballot, the initiative, referendum, recall, short ballot, and corrupt-practices legislation.

The movement for detailed and comprehensive corrupt-practices legislation which not only would prohibit bribery, intimidation, and fraud, but would also require publicity for campaign contributions and expenditures, prohibit certain classes of contributions, and designate specifically for what purposes campaign funds might be expended, did not begin until the latter part of the nineteenth century. The need for such legislation was not felt earlier, for it was not until the campaign of 1876 that money was used on a lavish scale.[2] Beginning about 1880 many stories of corruption at elections are found in newspapers and magazines. Regardless of whether these stories were authentic or not, they aroused interest and prepared the country for a reform movement. Information concerning campaign and election abuses gathered at various hearings held by investigating committees of both the state and federal governments was published widely. At the beginning of this period of wide spread interest in election reform, England passed its comprehensive Corrupt Practices Acts of 1883 and

[2] R. C. Brooks, *Corruption in American Politics and Life*, p. 220.

1885. American reform leaders now used these acts as models and urged the enactment of similar legislation in the United States. New York led the way with its feeble Act of 1890. The movement spread from state to state until today, as is shown in a preceding chapter,[3] most of the states are attempting to regulate very closely the use of campaign funds.

The federal government began its regulation of elections much later than the state governments. Although the Constitution gave the National Government authority to exert control over certain elections, the supervision of all matters of suffrage was at first left in the hands of the states. This policy was changed after the enfranchisement of the negroes. It was felt that in certain sections of the country the Fifteenth Amendment would be practically nullified unless the federal government prevented the discrimination forbidden by this Amendment. By its Acts of 1870 and 1871, under which federal officials were given very wide powers of oversight and control over elections, Congress attempted to prevent this discrimination. But the federal courts decided that these Acts were unconstitutional in so far as they attempted to protect the negro in his exercise of the suffrage at state elections from discrimination or molestation by private individuals. The Fifteenth Amendment was held only to forbid discrimination by the state as such. As a matter of practical effect the only real authority over elections Congress was left with after these decisions was that derived from Article 1, section 4 of the Constitution. Under this provision Congress was given authority to make or alter regulations concerning the times, places,

[3] Chapter 5.

and manner of holding Congressional elections, and under this provision the courts have generally held that Congress may enact such legislation as it deems necessary for the effectual safeguarding of these elections. Since Congressional elections take place at the same time as state elections, Congress may indirectly exercise some control over state elections.

The federal government began its regulation of the use of money in elections by prohibiting federal officers and employees from soliciting from other such officers and employees for campaign purposes, and by prohibiting any person from soliciting campaign funds in a public building. The next step taken was the prohibition of gifts by corporations. By the Acts of 1910 and 1911 publicity for contributions and expenditures was required, and a limitation was placed on the amount that candidates for Congress could spend in their campaigns. It has been shown that these Acts have been shorn of a great deal of their strength by the Newberry decision, which held that the Acts did not apply to primary elections. This decision led to the passage of the Federal Corrupt Practices Act of 1925. This Act first repealed all the previous corrupt practices legislation. Omitting the provisions held void by the Newberry decision, it then re-enacted the former statutes with a few additional provisions.

There is little doubt but that these laws have proved highly beneficial. Mr. Perry Belmont, one of the leading champions of a thorough-going system of corrupt-practices legislation, has thus summarized the results secured by the laws which had been enacted at the time he wrote:

A check has been put upon the large secret contributions of corporations and individuals, with the understanding that political debts are thus incurred by party organizations. Stockholders and policy holders no longer helplessly witness the expenditure of corporate funds for political purposes. Corporations and candidates are protected against exactions that were constantly increasing. The enormous and unnecessary campaign expenditures in recent years, affording opportunity and encouragement to corruption, have been materially diminished. It is now the accepted opinion that a contributor to a political committee has no right to secrecy. The false conception that in respect to political contributions the individual has the right to use his money as he sees fit no longer exists in disregard of long-established restrictions upon the use of money in elections. It is now admitted that campaign-fund publicity is not an unnecessary interference with alleged individual rights, and that publicity is essential to determine the propriety of motives prompting political contributions.[4]

In most of the states, then, there are laws strong enough to prevent corrupt practices at elections, and the state courts have shown a willingness to give these laws a broad interpretation. Congress, however, has been prevented from passing certain laws which might prove beneficial because of opposition to a too highly centralized government, and because in a few instances the federal courts have been strict in interpreting the Constitution.

But even in those states with the most far-reaching corrupt-practices laws, it is recognized that many elections are still influenced by grossly unfair methods. The best of laws on the statute books cannot provide a cure for a serious political disease. The enforcement of these laws must be in the hands of competent, upright officials, and back of these officials must be the

[4] *Progress of Campaign-Fund Publicity. North Am. Rev.,* 189 (1909), 35.

determination of a majority of the citizens to see that these laws are enforced. The great mass of the voters too frequently take political corruption as a matter of course. Sporadically, they become excited at the evils existing under "boss" rule, and for a time they throw off machine domination. But they soon go about their usual business, and the "boss" takes charge again. Before any permanent reform can be effected a continuous interest in political affairs must be aroused among the voters. If this interest can be aroused, there will undoubtedly follow a public opinion that will be hostile, not only to the more patent forms of election abuses such as bribery and fraud, but to lavish use of campaign funds as well. Until this opinion is felt the various corrupt-practices acts cannot be very effectively enforced, for no legislation, however beneficial, can be effectively enforced unless public opinion favors it.

Naturally, the question presents itself: How is this interest in political affairs and this public opinion hostile to corrupt practices at elections to be aroused? The answer usually given is by education. Undoubtedly much can be done through education to make the voters understand the problems of government and make them unwilling to allow special interests and corrupt politicians to capture the governmental agencies through dishonest elections. But it must be admitted that in the past education has seemed to fail in this respect. It has been too often true that the so-called best educated people have felt that they must not soil their hands by taking part in political activities. Educational leaders are aware of this failure in our educational system, and they are now making efforts to link up education with good

citizenship. Whether this movement will bring the desired results or not, the future must show.

The suggestion has been made from time to time that contributions above a comparatively small amount be forbidden, thus forcing the political managers to appeal to the rank and file of the party for contributions. By limiting the size of gifts, corrupt bargains between special interests and party managers might be prevented, but more important still, if thousands of voters should make small contributions, they would be more interested in the working of the party machinery.

The more radical proposal has been that the government supply all, or at least part, of the funds spent for campaign purposes. In an earlier chapter,[5] the experience of the state of Colorado in attempting to supply funds to political parties has been described. President Roosevelt in his message to Congress December 3, 1907 suggested that Congress should make grants to political parties:

> It is well to provide that corporations shall not contribute to presidential or national campaigns and furthermore to provide for the publication of both contributions and expenditures. There is, however, always danger in laws of this kind, which from their very nature are difficult of enforcement, the danger being lest they are obeyed by the honest, and disobeyed by the unscrupulous, so as to act only as a penalty upon honest men. . . . There is a very radical measure which would, I believe, work a substantial improvement in our system of conducting a campaign, although I am well aware it will take some time for people so to familiarize themselves with such a proposal as to be willing to consider its adoption. The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses

[5] See chapter 5.

of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which require a large sum of money. Then the stipulation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor, and the necessary publicity for receipts and expenditures could without difficulty be provided.[6]

Mr. McAdoo, on the Democratic side, has even advocated that all private contributions to campaign funds be forbidden:

We should consider the advisability of a drastic change in the national election laws. This thing of financing a campaign by the profiteering interests must cease, and even contributions by private citizens should be utterly wrong and improper. The expenses of the national election should be paid out of the United States Treasury, and it should be made a crime for a man to contribute a dollar to influence an election.[7]

This suggestion is most interesting, but it hardly seems practicable. On what basis would the public funds be granted? If the votes the candidates of a party received in the preceding election should be used as a basis, this scheme would give added support to the party in power, and there would be little chance for the development of a new party. If a lump sum should be granted to each party entering the campaign, an inducement would thereby be offered for the organization of all sorts of political faddists into parties. The United States Government might well issue impartial campaign pamphlets, allowing each party a certain amount of space, such as those now issued by several of the state

[6] *Congressional Record*, 42 (1907), 78.
[7] Quoted by A. E. Keet, "High Cost of President-Making," in the *Forum*, 64 (1920), 140.

governments,[8] but the difficulties in the way of a direct subsidy granted to the several parties seem insurmountable.

The solution of the campaign fund problem is most difficult. It must be recognized that in every campaign large sums are used for entirely legitimate purposes. How shall the collection and disbursement of these funds be regulated? The recent legislation described in chapter five is probably approaching the best practicable method. Gifts should only be allowed from individuals. To go further than most of the present legislation, the size of these gifts should be limited. Such a limitation could undoubtedly be evaded by having a gift larger than the law permitted one individual to make divided into separate gifts from various members of the family or others, but there would always be the possibility that such evasion would become known. While this evasion could not be considered a violation of the law, yet it might have the effect of injuring the party receiving the gift in its campaign for votes. Contributions should be required to be made to the responsible agent of the political party. All expenditures should be made through this responsible agent, who should be required to keep detailed accounts of all receipts and expenditures. The purposes for which campaign funds may be lawfully expended should be specified. Detailed statements of all receipts and expenditures should be filed by the responsible agent of the political party with some designated public official both before and after the primary and election. All the present laws should be strengthened by making the candidate responsible for any unlawful

[8] See chapter 4.

use of funds in his behalf. No longer should there be a premium on the candidate's remaining in ignorance of the manner in which his campaign is being conducted. The penalties for violation of these acts should include not only fine and imprisonment for those actually committing the offense, but, in addition, the candidate in whose interest the law had been violated should be disqualified to hold the office. The objection might be raised that the opposing candidate or party would see to it that these violations did occur, and a candidate innocent of any wrongdoing might be thereby disqualified. This might happen in a few instances, but the benefit the public would receive from such a provision through better campaign methods would more than counterbalance any individual cases of injustice that might arise. It does not appear, moreover, that any candidate or party would gain very much by attempting to have the opponent disqualified in this manner. It would simply mean that another election must be held.

It is not contended that a law drawn along the lines of the above plan would prove an absolute preventive of the misuse of campaign funds. But such legislation, properly enforced, and properly supported by the people of the country, would go far toward mitigating the evils resulting from the lavish use of these funds.

The division of power between the federal and state governments has made the regulation of election abuses more difficult. The question of federal control of elections has in recent years been one of the leading causes of controversy between advocates of states' rights and those favoring a more centralized government. It is clear that the individual states cannot adequately control

the activities of the national political parties operating in all the states. Will the federal government be allowed to exert its control? After a long period of leaving the regulation of elections to the states, the federal government seemed to be rapidly assuming control over national elections and the activities of national committees until its authority received a severe set-back in the Newberry decision. The whole matter of federal control is now unsettled, but it is certain that Congress will not be content to leave the election of its own members under state regulation alone. Senator Borah, who is usually rather favorable to the maintenance of power in the hands of the states, believes that the future will see Congress not only controlling national elections, but state elections as well. In a speech in the Senate, he said:

> We might just as well understand now as later that the National Government is going to assume practically complete control over the elections. Whenever a Senator is elected, or a Representative is elected, and you control that election by reason of that fact, you will as a practical fact control the elections of state officers. We should not blind ourselves to the fact that these Amendments to the Constitution widening and extending the power of the National Government over the franchise will lead to complete national control over elections.[9]

Whether Congress will ever be permitted to exercise such extensive control is doubtful. But, certainly, if the corrupt manipulations of elections are to be stopped effectively, the federal and state governments must act together to remedy such abuses.

In some parts of the popular press and magazines it seems to be fashionable to write and speak of the pres-

[9] *Congressional Record*, 56, 8760.

ent political era as decadent. It is easy enough to find evidence of corrupt politics, and it is easier still to find persons eager to spread stories of the failure of democratic governments to maintain purity in the elections where officers are chosen to carry on these governments. It is true that very often hostile public opinion, dishonest or incompetent prosecuting attorneys, and weak or perverse juries make it impossible to enforce legislation which has been enacted to prevent dishonest elections. These failures are spread broadcast, but little is said of the thousands of voters who take an intelligent interest in the elections, or of the activity of the officials who earnestly attempt to secure honesty at elections. Despite all evidence to the contrary, it is more than probable that elections in the democratic countries are today on a higher plane than ever before. In the opinion of Professor James T. Shotwell,

> Instead of increasing with the growth of democracy, the practice of corruption in politics tends to decrease. . . . The mixture of bribery and intimidation which so largely determined the suffrage upon which the governments of the good old days reposed, would, if revealed today, endanger rather than strengthen the tenure of power of any civilized government which had consciously resorted to such devices. . . . However poorly the laws may still be enforced in backward communities, the laws which have accumulated upon the statute books during the last generation to maintain the integrity of elections bear witness to a constant heightening of moral effort in the fundamentals of representative government.[10]

However beneficial rigid corrupt-practices legislation may prove, and however much may be gained by a proper correlation of the regulations of federal and

[10] "Democracy and Political Morality," in the *Political Science Quarterly*, 36 (1921), 4-8.

state governments, the conclusion seems to be that the further elimination of corruption in politics depends upon the enlightenment of the electorate and the further participation by all the people in the functioning of government. With sufficient knowledge of the machinery of government and of the problems at issue, and with the experience gained by all the voters participating in the political processes, we may confidently expect that the self-interest of the honest, intelligent majority will prevent the devious practices of a corrupt minority.[11]

Evidence that popular opinion sometimes exacts higher standards of conduct than the law demands is not lacking. This was forcibly brought out when it developed that one of the chief reasons the Republicans failed to nominate General Wood or Governor Lowden for President in 1920 was the fear that public opinion would be hostile to the candidacy of either of these men because of the tremendous sums they had spent in their pre-convention campaigns. The final chapter in the Newberry case offers even a more notable example of this. After the Supreme Court had declared the provisions of the law under which he had been indicted unconstitutional, and after the Senate had declared that he was entitled to his seat, Mr. Newberry resigned from the Senate because the people of his state expressed their strong disapproval of his campaign methods by the defeat of Mr. Newberry's colleague, Senator Townsend, who had been a defender of Mr. Newberry. That public opinion is constantly growing more critical of the methods used during campaigns is evidenced by

[11] The introduction of the short ballot would undoubtedly enable the voter to vote more intelligently and make him take a greater interest in elections.

party defense of the size of the funds they are using.[12] Twenty years ago no such defense would have been deemed necessary. There is every reason to believe that public opinion will increasingly demand that campaigns and elections be conducted in an honest and fair manner. Laws against abuses at elections are necessary, and laws providing for publicity of campaign methods are highly desirable, for they give the voters information as to how the campaign is being conducted, and probably check improper expenditure. It may be significant that the Smith and Vare scandals arose in Illinois where there is no law requiring publicity for campaign contributions and expenditures and in Pennsylvania where there is no legal limit to the amount of expenditures. But the chief hope for higher standards in political activities must be based on a public opinion that will not be satisfied with the maintenance of the standards set by law, but will enforce even more rigorous ones through the power of the voters to defeat any party or candidates who will not live up to such standards.

[12] See chapter 5, pp. 147-49.

APPENDIX

In the appendix will be found tables giving references to the state laws dealing with the various types of corrupt practices discussed in chapters I, II, III, IV, and V.

Table 1. References to state laws dealing with bribery.

Table 2. References to state laws dealing with intimidation.

Table 3. References to state laws dealing with fraud.

Table 4. References to state laws dealing with political advertising.

Tables 5 and 6. References to state laws dealing with the collection and expenditure of campaign funds.

TABLE 1

	Unlawful to give Bribe	*Unlawful to receive Bribe*	*Unlawful to promise appointment*	*Unlawful to Treat*	*Unlawful to pay for conveyance of Voter*	*Unlawful to solicit from candidates*
Ala.	Crim. Code, 1907, Sec. 6880	Crim. Code, 1907, Sec. 6778				Acts 1915, No. 171
Ariz.	R.S., 1901, Title IV, Sec. 46	R.S., 1901, Title IV, Sec. 47		R.S., 1901, Title IV, Sec. 48	R.S., 1901, Title IV, Sec. 49	
Ark.	Acts 1913, Ch. 308, Sec. 2	Acts 1913, Ch. 308, Sec. 7	Acts 1913, Ch. 308, Sec. 5		Acts 1913, Ch. 308, Sec. 7	Acts 1909, Ch. 165, Sec. 5
Cal.	Kerr's Crim. Code, Pt. I, Title IV, Sec. 51		Kerr's Crim. Code, Pt. I, Title IV, Sec. 53	Kerr's Crim. Code, Pt. I, Title IV, Sec. 57	Kerr's Crim. Code, Pt. I, Title IV, Sec. 58	
Colo.	Anno. Stats. 1911, Ch. 43, Sec. 2363	Anno. Stats. 1911, Ch. 43, Sec. 2364				
Conn.	Laws, 1909, Ch. 353	Laws, 1909, Ch. 353	Laws, 1909, Ch. 353			Laws, 1909, Ch. 353
Dela.	Rev. of 1893, Ch. 16	Rev. Code, 1915, Ch. 58, Sec. 1696				

Fla.	Comp. Laws, 1914, Sec. 262d					Laws, 1909, No. 60
Ga.	Anno. Code, 1914, Sec. 675	Anno. Code, 1914,Sec. 675				
Idaho	Pen. Code, 1909, Pt. I. Ch. 19	Pol. Code, 1908, Title IV, Ch. 6				
Ill.	Laws, 1919, P. 475, Sec. 66	Laws 1919, P. 475, Sec. 66				
Ind.	Laws, 1911, Ch. 121, Sec. 11	Laws, 1911, Ch. 121, Sec. 11				
Ia.	Sup. Code, 1907, Sec. 4922	Sup. Code, 1907, Sec. 4923	Anno. Code, 1913, Sec. 1134 (A)	Laws, 1907, Ch. 51		
Kans.	Anno. Stats., 1915, Sec. 4193	Anno. Stats., 1915, Sec. 4193		Gen. Stats., 1909, Sec. 3318		
Ky.	Stats., 1915, Sec. 4193	Stats. 1915, Sec. 1586				
La.	Stats., 1920, P. 678, Sec. 37	Acts 1890, P. 62	Acts 1912, No. 213			Acts, 1912, No. 213

TABLE 1 (Continued)

	Unlawful to give Bribe	*Unlawful to receive Bribe*	*Unlawful to promise appointment*	*Unlawful to Treat*	*Unlawful to pay for conveyance of Voter*	*Unlawful to solicit from candidates*
Me.	R. S. 1916, Ch. 7, Sec. 119	R. S. 1916, Ch. 7, Sec. 97				
Md.	Bagby's Anno. Code, Vol. III, Sec. 1996	Laws, 1908, P. 125		Code, 1904, Act 27, Sec. 29		
Mass.	Rev. Laws, Sup. 1908, Ch. 11		Rev. Laws, Sup. 1908, Ch. 11			Acts 1913, Ch. 835, Sec. 351
Mich.	Comp. Laws, 1907, Sec. 3581	Comp. Laws, 1907, Sec. 3584	Comp. Laws, 1907, Sec. 3582	Comp. Laws, 1907, Sec. 3590	Comp. Laws, 1907, Sec. 3640	
Minn.	Rev. Laws, 1905, Ch. 6	Rev. Laws, 1905, Ch. 6	Rev. Laws, 1905, Ch. 6	Rev. Laws, 1905, Ch. 6		
Miss.	Code 1906, Sec. 1123	Code 1906, Sec. 1124	Code 1906, Sec. 1135			Code 1906, Sec. 1158
Mo.	R. S. 1919, Sec. 5022	R. S. 1919, Sec. 5023	R. S. 1909, Ch. 36	R. S. 1919, Sec. 5024		
Mont.	Code 1907, Sec. 8143	Code 1907, Sec. 8146	Code 1907, Sec. 8143	Rev. Code, 1915, p. 987, Sec. 26	Code 1907, Sec. 8148	Rev. Code, 1915, p. 986, Sec. 24

Nebr.	R. S. 1913, Ch. 20, Sec. 446			Comp. Stats. 1907, Ch. 26	R. S. 1913, Ch. 20, Sec. 441	
Nev.	Rev. Laws, 1919, P. 2723, Sec. 27			Rev. Laws, 1919, P. 2723, Sec. 23	Rev. Laws, 1919, P. 2723, Sec. 28	Rev. Laws, 1919, P. 2723, Sec. 27
N. H.	Laws, 1911, Ch. 99	Laws, 1911, Ch. 99		Pub. Stats., 1901, Ch. 39		Laws, 1915, Ch. 169, Sec. 9
N. J.	Pub. Laws, 1911, Sec. 172	Gen. Stats., 1895, P. 1295	Pub. Laws, 1911, Sec. 172	Laws, 1906, Ch. 208		Pub. Laws, 1911, Sec. 167
N. M.	Anno. Stats., 1915, Sec. 2049	Anno. Stats. 1915, Sec. 2049				
N. Y.	Comp. Laws, 1909, Ch. 17	Comp. Laws, 1909, Ch. 17		Comp. Laws, 1909, Ch. 88		
No. Car.	Comp. Stats. 1919, Sec. 4186	Comp. Stats. 1919, Sec. 4186	Comp. Stats. 1919, Sec. 4185			
N. Dak.	R. S. 1905, Sec. 8593		Laws 1911, Ch. 129		Laws 1911, Ch. 129	Laws 1913, Ch. 157
Ohio	Page's Gen. Code, Sec. 13312	Page's Gen. Code, Sec. 13313	Page's Gen. Code, Sec. 5175 —(28)			
Okla.	Snyder's Comp. Laws, 1909, Sec. 2087	Laws, 1903, P. 156	Snyder's Comp. Laws, 1909, Sec. 2084			

TABLE 1 (Continued)

	Unlawful to give Bribe	*Unlawful to receive Bribe*	*Unlawful to promise appointment*	*Unlawful to Treat*	*Unlawful to pay for conveyance of Voter*	*Unlawful to solicit from candidates*
Ore.	Anno.Code,1901, Sec. 1903	Anno.Code,1901, Sec. 1904	Laws 1909, Ch. 3	Laws 1909, Ch. 3		Laws 1909, Ch. 3
Penn.	Purdon's Dig. 1903, Vol. II, Sec. 94	Purdon's Dig. 1903, Vol. II, Sec. 95				
R. I.	Gen. Laws, 1909, Title II, P. 152	Gen. Laws, 1909, Title II, P. 152				
So. Car.	Code 1902, Vol. II, P. 324	Code 1902, Vol. II, P. 324		Laws 1904, No. 231		
So. Dak.	Rev. Code, 1919, Sec. 3648	Rev. Code, 1919, Sec. 3650	Rev. Code, 1919, Sec. 3649			
Tenn.	Shannon's Anno. Code, 1917, Sec. 6868 a1	Shannon's Anno. Code, 1917, Sec. 6868 a2	Shannon's Anno. Code, 1917, Sec, 6868 a1			
Texas	Crim.Stats.1916, Title 6, Sec. 206	Crim.Stats.1916, Title VI, Sec. 208	Laws 1905, Ch. 11		Civil Stats. 1914, Sec. 3020	

Utah	Comp. Laws, 1917, Ch. 14, Sec. 2335	Comp. Laws, 1917, Ch. 14, Sec. 2336	Comp. Laws, 1917, Ch. 14, Sec. 2335		Comp. Laws, 1917, Ch. 14, Sec. 2389	Comp. Laws, 1917, Ch. 14, Sec. 2392
Vt.	Stats. 1906, Title III, Sec. 104	Laws 1915, Act No. 4, Sec. 24				
Va.	Pollard's Code, 1904, Vol. II, Sec. 3826	Acts 1914, Ch. 305, Sec. 17				
Wash.	Laws 1901, P. 298				Code 1881, Sec. 3146	
W.Va.	Code Sup. 1909, Sec. 150-b-1	Code Sup. 1909, Sec. 150-b-1	Code Sup. 1909, Sec. 150-b-1	Code Sup. 1909, Sec. 150-b-1		Code Sup. 1909, Ch. 3
Wis.	Laws 1875, Ch. 56	Laws 1875, Ch. 56	Stats. 1917, Ch. 12, Sec. 12		Stats. 1917, Ch. 12, Sec. 13	Stats. 1917, Ch. 12, Sec. 12
Wyo.	Code 1910, Sec. 2227	Code 1910, Sec. 2228			Code 1910, Sec. 2316	

TABLE 2

	General Provisions Prohibiting Intimidation	*Prohibition Against Intimidation by Employers*	*Provisions Requiring Employees to be Given Time to Vote*
Alabama	Gen. Acts, 1915, No. 171	Crim. Code, 1907, Sec. 6833	
Arizona	R. S., 1901, Title IV, Sec. 57	R. S., 1901, Title IV, Sec. 64 Gen. Laws of Ariz., 1923, Ch. IV, P. 53	Civ. Code, 1913, Title 12, Sec 2969
Arkansas	Kirby & Castle's Dig. 1916, Ch. 59, Sec. 3046		Acts, 1907, Ch. 7, Sec. 2
California	Kerr's Crim. Code, 1908, Pt. I, Title IV, Sec. 46	Kerr's Crim. Code, 1908, Pt. I, Title IV, Sec. 55	
Colorado	Anno. Stats., 1911, Vol. III, Ch. 43	Anno. Stats., 1911, Vol. III, Ch. 43, Sec. 2366-7	Laws, 1891, P. 165
Connecticut	Gen. Stats., 1902, Sec. 43	Gen. Stats., 1902, Sec. 2699	
Delaware	Pen. Code, 1915, Ch. 58, Sec. 1696	Laws, 1881, Ch. 329	
Florida	Gen. Stats., 1906, Sec. 170	Comp. Laws, 1914, Sec. 3839	Comp. Laws, 1914, Sec 262a
Georgia	Laws, 1906, P. 46		
Idaho	Pen. Code, 1909, Title III, Pt. I, Ch. 19	Pen. Code, 1909, Title III, Pt. I, Ch. 19	

Illinois	Laws, 1919, P. 475, Sec. 66		Laws, 1919, P. 475, Sec. 7
Indiana	Burn's Anno. Stats., 1908, Vol. I, Sec. 6998	Laws, 1911, Ch. 121, Sec. 11	Burn's Anno Stats., 1908, Vol. I, Sec. 6899
Iowa	Sup. Code, 1907, Sec. 4928		Code, 1897, Sec. 1123
Kansas	Gen. Stats., 1915, Sec. 4193		Gen. Stats., 1909, Sec. 3304
Kentucky	Russell Stats., 1909, Sec. 3416	Carroll Stats., 1918, Sec. 1565b-2	Russell Stats., 1909, Sec. 3431
Louisiana	Acts, 1912, No. 213		
Maine	R. S., 1916, Ch. 7, Sec. 92		
Maryland	Bagby's Anno. Code, Vol. 3, Sec. 199a	Laws, 1908, Sec. 170	Code, 1904, Art. 33, Sec. 99
Mass.	Acts, 1918, Ch. 41	Acts, 1913, Ch. 835, Sec. 489	Rev. Laws, Sup. 1908, Ch. 11
Michigan	Comp. Laws, 1906, Sec. 11456	Pub. Acts, 1913, No. 109, Sec. 15	
Minnesota	Rev. Laws, 1905, Ch. 6	Rev. Laws, 1905, Ch. 6	Rev. Laws, 1905, Ch. 6

TABLE 2 (Continued)

	General Provisions Prohibiting Intimidation	*Prohibition Against Intimidation by Employers*	*Provisions Requiring Employees to be Given Time to Vote*
Mississippi	Code, 1906, Sec. 3723	Code, 1906, Sec. 3724	
Missouri	R. S., 1909, Ch. 36	R. S., 1909, Ch. 36	R. S., 1909, Ch. 36
Montana	Code, 1907, Sec. 8131	Code, 1907, Sec. 8158	Laws, 1919, Ch. 113, Sec. 41
Nebraska	R. S., 1913, Ch. 20, Sec. 449	Comp. Stats., 1907, Ch. 26	Comp. Stats., 1907, Ch. 26
Nevada	Rev. Laws, 1919, P. 2723, Sec. 24		Rev. Laws, 1919, P. 2722, Sec. 1
New Hampshire	Pub. Stats., Sup. 1913, Ch. 33		
New Jersey	Comp. Stats., 1915, Sec. 183	Comp. Stats., 1915, Sec. 183	
New Mexico	Anno. Stats., 1915, Sec. 2054		Anno. Stats., 1915, Sec. 2015
New York	Comp. Laws, 1909, Ch. 17, Sec. 548	Comp. Laws, 1909, Ch. 17, Sec. 553	Comp. Laws, 1909, Ch. 17, Sec. 555
North Carolina	Comp. Stats., 1919, Sec. 4185		
North Dakota	R. S., 1905, Sec. 8591		
Ohio	Page's Gen. Code, Sec. 5175-27	Page's Gen. Code, Sec. 5176-26a	Bates' Anno. Stats., 1905, Sec. 7053

Oklahoma	Snyder's Comp. Laws, 1909, Sec. 2096		Laws 1910, P. 231
Oregon	Bellinger & Cotton's Anno. Code, 1901, Sec. 1906	Bellinger & Cotton's Anno. Code, 1901, Sec. 1907	
Pennsylvania	Purdon's Dig. 1903, Vol. II, Sec. 98		
Rhode Island	Gen. Laws, 1909, Title II, P. 112		
South Carolina	Code, 1902, Vol. II, Pa. 324		
South Dakota	Rev. Code, 1919, Sec. 3657	Rev. Code, 1919, Sec. 3659	Pnl. Code, 1903, Ch. 19, Sec. 2035
Tennessee	Shannon's Sup. 1903, P. 233	Shannon's Anno. Code, 1917, Sec. 1173	Shannon's Anno. Code, 1917, Sec. 1173
Texas	Vernon's-Sayle's Civ. Stats., 1914, Sec. 2928d	Laws, 1905, Ch. 11	Laws, 1905, Ch. 11
Utah	Comp. Laws, 1917, Ch. 14, Sec. 2337	Comp. Laws, 1907, Sec. 839	Comp. Laws, 1907, Sec. 909
Vermont	Stats., 1906, Title III, Sec. 106		

TABLE 2 (Continued)

	General Provisions Prohibiting Intimidation	*Prohibition Against Intimidation by Employers*	*Provisions Requiring Employees to be Given Time to Vote*
Virginia	Pollard's Code, 1904, Vol. II, Sec. 3827		
Washington	Laws, 1901, P. 298		
West Virginia	Acts, 1915, Ch. 27, Sec. 2	Acts, 1915, Ch. 27, Sec. 3	Code, 1906, Sec. 162
Wisconsin	R. S., 1898, Sec. 4492	Statts., 1917, Ch. 12, Sec. 19	
Wyoming	Code, 1910, Sec. 2231		Laws, 1911, Ch. 23, Sec.21

TABLE 3

	Illegal Acts in Registration; registering when not qualified; Registering for another, or more than once. Officials registering unqualified.	*Illegal Voting; Voting more than once; where not qualified: officials permitting such actions.*	*Illegal aid to assisted voters; false statements as to disability; attempt to influence such voters.*	*Distinguishing marks on ballots forbidden*	*Unlawful to participate in primary or convention of another party than one's own.*
Ala.	Crim. Code, 1907, Secs. 6883-90	Crim. Code, 1907, Secs. 6878-81	Crim. Code, 1907, Sec. 6785		
Ariz.	R. S., 1901, Title IV, Secs. 37-39	R. S., 1901, Title IV, Secs. 35-37	Civ. Code, 1913, Title 12, Sec. 2970		
Ark.		Acts, 1909, Ch. 165, Sec. 9	Kirby & Castle's Dig., 1916, Sec. 3125		
Calif.	Kerr's Crim. Code, 1908, Pt. I, Title IV, Secs. 42-43	Kerr's Crim. Code, 1908, Pt. I, Title IV, Secs. 43-44	Kerr's Crim. Code, 1908, Pt. I, Title IV, Sec. 45	Stats., 1913, Ch. 641, Sec. 1	
Colo.	Anno. Stats., 1911, Ch. 43, Sec. 2381	Anno. Stats., 1911, Ch. 43, Secs. 2361, 2387, 2391	Anno. Stats., 1911, Ch. 43, Sec. 2373	Anno. Stats., 1911, Ch. 43, Sec. 2377	Anno. Stats., 1911, Ch. 43, Sec. 2398
Conn.	Gen. Stats., 1902, Secs. 1700-1701	Gen. Stats., 1902, Secs. 1702-06	Pub. Acts, 1915, Ch. 262, Sec. 3	Laws, 1903, Ch. 207	Laws, 1905, Ch. 273
Dela.	Laws, 1898, Ch. 35	Rev. Code, 1915, Ch. 58, Secs. 1695-96	Rev. Code, 1915, Ch. 58, Sec. 1739	Rev. Code, 1915, Ch. 58, Sec. 1762	

TABLE 3 (Continued)

	Illegal Acts in Registration; registering when not qualified; Registering for another, or more than once. Officials registering unqualified.	*Illegal Voting; Voting more than once; where not qualified: officials permitting such actions.*	*Illegal aid to assisted voters; false statements as to disability; attempt to influence such voters.*	*Distinguishing marks on ballots forbidden*	*Unlawful to participate in primary or convention of another party than one's own.*
Fla.		Gen. Stats., 1906, Sec. 170	Gen. Stats., 1906, Sec. 170		
Ga.	Park's Anno. Code, 1914, Secs. 657-661	Park's Anno. Code, 1914, Secs. 663-670			
Idaho	Pen. Code, 1909, Title III, Pt. I, Ch. 19	Pen. Code, 1909, Title III, Pt. I, Ch. 19	Laws, 1917, Ch. 93, Sec. 4		
Ill.	Hurd's R. S., 1909, Ch. 46	Hurd's R. S., 1909, Ch. 46	Acts, 1903, Ch. 430, Sec. 9-10	Laws, 1919, P. 475, Sec. 71	Laws, 1913, P. 31v, Sec. 43
Ind.	Laws, 1911, Ch. 150, Secs. 19-22	Laws, 1911, Ch. 121	Burn's Anno. Stats., 1908, Vol. I, Sec. 2574	Burn's Anno. Stats., 1908, Vol. I, Sec. 2572	Acts, 1915, Ch. 105, Sec. 38
Iowa	Sup. Code, 1907, Secs. 4917-19	Sup. Code, 1907, Secs. 4914-17		Sup. Code, 1913, Sec. 1120	Sup. Code, 1907, Sec. 4930
Kan.		Gen. Stats., 1909, Secs. 2688-97		Gen. Stats., 1909, Sec. 2736	
Ky.	Russell'sStats., 1909, Secs. 3405-07	Russell'sStats., 1909, Secs. 3408-13	Carroll'sStats., 1915, Sec. 1475	Carroll'sStats., 1915, Sec. 1476	

La.	Acts, 1908, No. 96	Wolff's Stats., 1920, P. 647, Sec. 42	Wolff's Stats., 1920, P. 671, Sec. 24	Wolff's Stats., 1920, P. 656, Sec. 76	Wolff's Stats., 1920, P. 661, Sec. 10
Maine	R. S., 1916, Ch. 5, Sec. 30	R. S., 1903, Secs. 95-97	R. S., 1916, Ch. 7, Sec. 92	R. S., 1916, Ch. 7, Sec. 92	
Md.	Code, 1904, Art. 33, Secs. 87-91	Code, 1904, Art. 33, Secs. 90-94	Code, 1904, Art. 33, Sec. 97	Code, 1904, Art. 33, Sec. 98	
Mass.	Rev. Laws, Sup. 1908, Ch. 11	Rev. Laws, Sup. 1908, Ch. 11	Rev. Laws, Sup. 1908, Ch. 11	Rev. Laws, Sup. 1908, Ch. 11	Acts, 1916, Ch. 179, Sec. 8
Mich.	Howell's Anno. Stats., 1912, Secs. 134-5	Comp. Laws, 1907, Secs. 3525-31	Pub. Acts, 1917, Ch. 11	Pub. Acts, 1917, Ch. 14, Sec. 1	
Minn.	Rev. Laws, 1905, Ch. 6, Sec. 283	Rev. Laws, 1905, Ch. 6, Secs. 348-52	Gen. Stats., 1913, Sec. 463	Gen. Stats., 1913, Sec. 465	
Miss.	Code, 1906, Sec. 905	Code, 1906, Secs. 1120-26		Code, 1906, Sec. 1127	
Mo.	R. S., 1909, Ch. 36	R. S., 1909, Ch. 36			
Mont.	Code. 1907, Sec. 534	Code, 1907, Secs. 8125-28			Code, 1907, Sec. 8129
Nebr.	Comp. Stats., 1907, Ch. 26	R. S., 1913, Ch. 20, Secs. 444-49	R. S., 1913, Ch. 20, Sec. 456	R. S., 1913, Ch. 20, Sec. 464	

TABLE 3 (Continued)

	Illegal Acts in Registration; registering when not qualified; Registering for another, or more than once. Officials registering unqualified.	*Illegal Voting; Voting more than once; where not qualified: officials permitting such actions.*	*Illegal aid to assisted voters; false statements as to disability; attempt to influence such voters.*	*Distinguishing marks on ballots forbidden*	*Unlawful to participate in primary or convention of another party than one's own.*
Nev.	Cutting's Comp. Laws, 1900, Sec. 1606	Cutting's Comp. Laws, 1900, Sec. 1577			
N. H.		Laws, 1911, Ch. 99, Sec. 8	Pub. Stats., Sup. 1913, Ch. 33	Pub. Stats., Sup. 1913, Ch. 33	
N. J.	Laws, 1898, Ch. 139	Laws, 1905, Ch. 118			
N. M.	Anno. Stats., 1915, Sec. 2055	Anno. Stats., 1915, Secs. 2055-56			
N. Y.	Comp. Laws, 1909, Ch. 17, Sec. 175	Comp. Laws, 1909, Ch. 17, Sec. 365	Laws, 1919, Ch. 370	Laws, 1911, Ch. 891	Comp. Laws, 1909, Ch. 17, Secs. 546-47
N. C.	Cons. Stats., 1919, Sec. 4186	Laws, 1901, Ch. 89			
N. D.	R. S., 1905, Secs. 8585-87	R. S., 1905, Secs. 8587-90	Comp. Laws, 1913, Sec. 988		
Ohio	Page's Gen. Code, Secs. 13309-11	Page's Gen. Code, Secs. 13250-58	Page's Gen. Code, Secs. 13268-71	Page's Gen. Code, Sec. 13263	Page's Gen. Code, Sec. 13327

Okla.	Snyder's Comp. Laws, 1909, Secs. 2080-86	Snyder's Comp. Laws, 1909, Secs. 3205-09	Rev. Laws, 1910, Sec. 3039		
Ore.		Bellinger & Cotton's Anno. Code, 1901, Secs. 1900-10		Laws, 1920, Sec. 4021	
Pa.		Purdon's Dig., 1903, Vol. I, Secs. 156-170	Putdon's Dig., 1903, Vol. II, Sec. 212	Putdon's Dig., 1903, Vol. II, Sec. 212	Laws, 1906, No. 10, P. 43
R. I.	Gen. Laws, 1909, Title II, P. 70	Gen. Laws, 1909, Title II, P. 152	Gen. Laws, 1909, Title II, P. 112	Gen. Laws, 1909, Title II, P. 112	Gen. Laws, 1909, Title II, P. 122
S. C.	Acts, 1903, No. 73, P. 112	Code, 1902, Vol. II, P. 324			
S. D.	Rev. Code, 1919, Secs. 3666-70	Rev. Code, 1919, Secs. 3658-65	Rev. Code, 1919, Secs. 7267-69	Rev. Code, 1919, Sec. 7273	
Tenn.	Shannon's Anno. Code, 1917, Sec. 1215	Shannon's Anno. Code, 1896, Secs. 1069, 1170	Shannon's Anno. Code, 1917, Sec. 1256	Shannon's Anno. Code, 1917, Sec. 1256	Laws, 1909, P. 295
Texas		R. S., 1895, Title VI, Arts. 151-58	Vernon's-Sayles Civ. Stats., 1914, Sec. 3003		
Utah	Comp. Laws, 1907, Secs. 823-27	Comp. Laws, 1917, Ch. 14, Sec. 2337	Comp. Laws, 1917, Sec. 2220		

TABLE 3 (Continued)

	Illegal Acts in Registration; registering when not qualified; Registering for another, or more than once. Officials registering unqualified.	*Illegal Voting; Voting more than once; where not qualified; officials permitting such actions.*	*Illegal aid to assisted voters; false statements as to disability; attempt to influence such voters.*	*Distinguishing marks on ballots forbidden*	*Unlawful to participate in primary or convention of another party than one's own.*
Vt.		Stats., 1906, Title III, Secs. 104-06			Laws, 1915, Act. No. 1, Sec. 14
Va.		Pollard's Code, 1904 Vol. II, Secs. 3824-29			Acts, 1914, Ch. 305, Sec. 8
Wash.	Laws, 1893, P. 74	Laws, 1893, P. 74			
W. Va.		Code, 1906, Sec. 45	Code, 1916, Ch. 3, Sec. 60	Code, 1906, Sec. 95	
Wis.	Laws, 1905, Ch. 313	Laws, 1905, Ch. 313	R. S., 1898, Secs. 4518-21		
Wyo.	Code, 1910, Secs. 2214-20	Code, 1910, Secs. 2227-35			Laws, 1911, Ch. 23, Sec. 22

TABLE 4

	Political advertisements in newspapers must be marked as such	*Posters and advertisements must bear the name and address of persons responsible for them*	*Unlawful to purchase editorial support*	*Unlawful to circulate literature reflecting on candidate's character*
Alabama	Acts, 1915, Ch. 171	Acts, 1915, Ch. 171		
Arizona				
Arkansas	Acts, 1913, Ch. 308, Sec. 7	Acts, 1913, Ch. 307		
California		Kerr's Crim. Code, 1908, Pt. I, Title IV, Sec. 58		Kerr's Crim. Code, 1908, Pt. I, Title IV, Sec. 58
Colorado				
Connecticut				
Delaware				
Florida	Comp. Laws, 1914, Sec. 3841T	Comp. Laws, 1914, Sec. 3841T	Comp. Laws, 1914, Sec. 3841U	
Georgia				
Idaho				
Illinois		Laws, 1917, p. 457		
Indiana	Anno. Stats., 1914, Vol. 3, p. 577	Anno. Stats., 1914, Vol. 3, P. 577	Anno. Stats., 1914, Vol. 3, p. 577	

TABLE 4 (Continued)

	Political advertisements in newspapers must be marked as such	*Posters and advertisements must bear the name and address of persons responsible for them*	*Unlawful to purchase editorial support*	*Unlawful to circulate literature reflecting on candidate's character*
Iowa				
Kansas		Gen. Stats., 1915, Sec. 4222		
Kentucky				
Louisiana		Acts, 1912, No. 213, Sec. 14		
Maine				
Maryland	Laws, 1908, P. 125	Laws, 1920, Ch. 697		
Massachusetts	Acts, 1910, P. 35	Acts, 1910, P. 35	Acts, 1910, P. 35	Acts, 1910, P. 35
Michigan	Pub. Acts, 1913, No. 109			Pub. Acts, 1913, No. 109
Minnesota	Gen. Stats., 1913, Sec. 568	Gen. Stats., 1913, Sec. 568		Rev. Laws, 1905, Sec. 379
Mississippi		Code, 1906, Sec. 4138		
Missouri		R. S., 1919, Sec. 5042		

Montana	Rev. Code, 1915, p. 989	Rev. Code, 1915, p. 989		
Nebraska				
Nevada	Rev. Laws, 1919, P. 2723	Rev. Laws, 1919, P. 2723		
New Hampshire	Laws, 1911, Ch. 106	Laws, 1911, Ch. 106		
New Jersey	Comp. Stats., 1911-15, Sec. 156	Comp. Stats., 1911-15, Sec. 156		
New Mexico				
New York				
North Carolina		Sup. Code, 1913, Vol. 3, p. 546		
North Dakota	Comp. Laws, 1913, Sec. 937		Comp. Laws, 1913, Sec. 937	
Ohio		Page's Gen. Code, Sec. 13343-I		
Oklahoma				
Oregon	Laws, 1909, Ch. 3	Laws, 1909, Ch. 3	Laws, 1909, Ch. 3	
Pennsylvania				

TABLE 4 (Continued)

	Political advertisements in newspapers must be marked as such	*Posters and advertisements must bear the name and address of persons responsible for them*	*Unlawful to purchase editorial support*	*Unlawful to circulate literature reflecting on candidate's character*
Rhode Island	Laws, 1923, Ch. 2342	Laws, 1923, Ch. 2342		
South Carolina				
South Dakota	Ch. 227, Sess. Laws of 1921	Ch. 227, Sess. Laws of 1921		
Tennessee				
Texas	Laws, 1905, Ch. 11			
Utah	Comp. Laws, 1917, Sec. 2382	Comp. Laws, 1917, Sec. 2382		
Vermont			Stats., 1906, Title 32, Sec. 5952	
Virginia	Acts, 1914, Ch. 305, Sec. 12		Acts, 1914, Ch. 305, Sec. 12	
Washington	Laws, 1909, Ch. 82	Laws, 1909, Ch. 82	Laws, 1909, Ch. 82	
West Virginia	Acts, 1915, Ch. 27	Acts, 1915, Ch. 27		
Wisconsin	Stats., 1917, Ch. 12, Sec. 14	Stats., 1917, Ch. 12, Sec. 14	Laws, 1915, Ch. 499, Sec. 18	Laws, 1915, Ch. 499, Sec. 18
Wyoming				

TABLE 5

	Regulation of Contributions by Corporations	*Designation of Purpose for which funds may be spent*	*All Expenditures to be made thru Treas. of Political Committee or by Candidate*	*Unlawful to Solicit from Public Employees*	*Unlawful to Solicit from Candidates*
Ala.	Gen. Acts, 1915, Ch. 171	Gen. Acts, 1915, Ch. 171	Gen. Acts, 1915, Ch. 171		
Ariz.	Civ. Code, 1913, Title 12, Sec. 3058		R. S., 1913, P. 1015		Rev. Stats., 1913, Title IV, Sec. 53
Ark.					
Cal.		Laws, 1907, P. 671		Henning's Gen'l. Laws, 1920, Ch. 59, Sec. 19	
Col.	Laws, 1909, P. 141	Mill's Anno. Stats., 1890, Ch. 36			
Conn.	Laws, 1909, Ch. 353	Rev. Gen. Stats., 1918, Sec. 674	Pub. Acts, 1911, Ch. 243	Laws, 1913, Ch. 232	Rev. Stats., 1918, Ch. 36, Sec. 679
Del.	Laws, 1917, Ch. 112	Laws, 1917, Ch. 112	Laws, 1917, Ch. 112		
Fla.	Gen. Stats., 1906, Sec. 3826	Comp. Laws, 1914, Sec. 3841 P	Comp. Laws, 1914, Sec. 3841 ss.		
Ga.	Parks Anno. Code, 1914, Sec. 672				

TABLE 5 (Continued)

	Regulation of Contributions by Corporations	*Designation of Purpose for which funds may be spent*	*All Expenditures to be made thru Treas. of Political Committee or by Candidate*	*Unlawful to Solicit from Public Employees*	*Unlawful to Solicit from Candidates*
Idaho		Laws, 1911, Ch. 178, Sec. 24		Laws, 1905, P. 113	
Ill.					
Ind.	Laws, 1911, Ch. 121, Sec. 4	Laws, 1911, Ch. 121, Sec. 6	Laws, 1911, Ch. 121, Sec. 5		Laws, 1911, Ch. 121, Sec. 4
Iowa	Laws, 1907, Ch. 73			Comp. Code, 1919, Sec. 4232	
Kans.	Gen. Stats., Anno, 1915, Sec. 4350		Gen. Stats., Anno, 1915, Sec. 4335	Laws, 1915, Ch. 156, Sec. 26	
Ken.	Carroll's Stats., 1918, Sec. 1565 b-1	Carroll's Stats., 1918, Sec. 1565, b-3			
La.	Acts, 1912, No. 213, Sec. 25		Acts, 1912, No. 213, Sec. 6		
Me.		R. S., 1916, Ch. 7, Sec. 128	R. S., 1916, Ch. 7, Sec. 127		
Md.	Laws, 1908, P. 125	Laws, 1908, P. 125	Laws, 1908, P. 125		

Mass.	Acts, 1913, Ch. 835	Gen. Acts, 1917, Ch. 83	Rev. Laws, 1908, Ch. 11	Acts, 1918, Ch.148	Rev. Laws, Sup. 1908, Ch. 11
Mich.	Pub. Acts, 1913, No. 109, Sec. 14	Pub. Acts, 1913, No. 109, Sec. 3	Pub. Acts, 1913, No. 109, Sec. 2		
Minn.	Gen. Stats., 1913, Sec. 592	Gen. Stats., 1913, Sec. 567	Gen. Stats., 1913, Sec. 574	Laws, 1913, Ch. 105, Secs. 22-23	
Miss.	Hemmingway Anno. Code, 1917, Sec. 861				
Mo.			R. S., 1919, Sec. 5034		R. S., 1919, Sec. 3189
Mont.	Rev. Code, 1915, P. 986		Code, 1907, Sec. 8169	Rev. Code, 1915, Sec. 20	
Neb.	Comp. Stats., 1907, Ch. 26	Laws, 1915, Ch. 36		Laws, 1917, P. 514	
Nev.	Rev. Laws, 1919, P. 2723		Rev. Laws, 1919, P. 2723	Rev. Laws, 1919, P. 2728	Rev. Laws, 1919, P. 2723
N. H.	Laws, 1911, Ch. 109	Laws, 1915, Ch. 169	Laws, 1911, Ch. 111		
N. J.	Comp. Stats., 1911-15, Sec. 169	Comp. Stats., 1911-15, Sec. 172	Comp. Stats., 1911-15, Sec. 148	Comp. Stats., 1911-15, Sec. 166	

TABLE 5 (Continued)

	Regulation of Contributions by Corporations	*Designation of Purpose for which funds may be spent*	*All Expenditures to be made thru Treas. of Political Committee or by Candidate*	*Unlawful to Solicit from Public Employees*	*Unlawful to Solicit from Candidates*
N. M.			Anno. Stats., 1915, Sec. 2060		
N. Y.	Cons. Stats., 1909 Ch. 23	Cons. Stats., 1909, Ch. 88		Cons. Stats., 1909, Ch. 88	Cons. Stats., 1909, Ch. 88
No. Car.	Stats., 1919, Sec. 4199				
No. Dak.	Comp. Laws, 1913, Sec. 933	R. S., 1905, Sec. 8624			
Ohio	Page's Gen. Code, Sec. 13320	Page's Gen. Code, Sec. 5175-26		Gen. Code, 1920, Sec. 486-23	
Okla.	Laws, 1910, P. 231	Snyder's Comp. Laws, 1909, Sec. 3284	Laws, 1908, P. 316		
Ore.	Laws, 1909, Ch. 3	Laws, 1909, Ch. 3		Olson Laws, 1920, Sec. 4132	
Penn.	Laws, 1906, No. 17	Purdon's Dig., 1903, Vol. I, Sec. 181	Laws, 1906, No. 17	Purdon's Dig., 1903, Vol. I, Sec. 187	

R. I.					
S. Car.					
So. Dak.	Laws, 1907, Ch. 142	Rev. Code, 1919, Sec. 7381	Laws, 1907, Ch. 146		
Tenn.	Shannon's Code, 1903, P. 835				
Texas	Laws, 1907, P. 169	Vernon Sayle's Civ. Stats., 1914, Sec. 3174 P		Laws, 1905, Ch. 11	
Utah	Comp. Laws, 1917, Sec. 2379	Comp. Laws, 1917, Sec. 2365	Comp. Laws, 1917, Sec. 2362		
Vt.		Stats., 1906, Title 22, Sec. 5952			
Va.		Acts, 1914, Ch. 305, Sec. 11			
Wash.		Laws, 1907, P. 474			
W. Va.	Code Sup. 1909, Sec. 158	Code Sup. 1909, Sec. 150	Code Sup. 1909, Sec. 158	Acts, 1915, Ch. 27	
Wis.	Laws, 1905, Ch. 492	Stats., 1917, Ch. 12, Sec. 6	Stats., 1917, Ch. 12, Sec. 3	Laws, 1919, Ch. 572	
Wyo.	Laws, 1911, Ch. 41, Sec. 10	Laws, 1911, Ch. 41, Sec. 9	Laws, 1911, Ch. 41, Sec. 8		

TABLE 6

	Limitation on Expenditures of Candidate for Governor	*Object of Expenditure*	*Exemptions Allowed*	*Time of Filing Statement before or after Election*
Alabama, Gen. Acts, 1915, pp. 250-54	$10,000	Nomination and Election	None	Before and After
Arizona, R.S., 1913, pp. 1014-23	$1,000	Nomination	None	Before and After both primary and election.
Arkansas, Acts, 1913, pp. 1254-67	$5,000	Nomination	Actual personal, traveling and hotel expenses	After primary
California, Gen. Laws, 1915, pp. 353-57	10% of one year's salary	Nomination and Election	None	After
Colorado, Anno. Stats., 1912, V. 3, pp. 1522-24	$2,500	Nomination	None	Candidates 10 days after; State Chairmen, 30 days after
Connecticut, Pub. Acts, 1911, Ch. 243, pp. 1536-37	$10. for each 1000 voters for nomination, $15. for election	Nomination and Election	Postage, telegrams, telephoning, stationery, printing, expressage, traveling	After

Delaware, Laws, 1917, Ch. 112	No limit			Candidates 15 days, committee 30 days, after both primary and election.
Florida, Comp. Laws, 1914, Vol. 2, pp. 1846-7	$4,000	Nomination	None	Before and after both primary and election.
Georgia, Anno. Code, 1914, Vol. I, p. 86	No limit			Before and after both primary and election.
Idaho, Laws, 1909, p. 205, Laws, 1911, pp. 576-77	Not to exceed 25% of yearly salary	Nomination	None	After primary
Illinois				
Indiana, Anno. Stats., 1914, V. 3, pp. 577-80, Sup. 1918, pp. 470-71	$25. for each 1000 voters up to 50000; $10 for each 1000 in excess of 50000 and up to 100,000; $5. for each 1000, in excess of 100,000	Nomination and Election	Postage, circulars, telegrams, printing, expressage, traveling	Candidates 30 days after; committee 20 days after.
Iowa, Anno. Code, Sup. 1913, pp. 422-23				After primary and election

TABLE 6 (Continued)

	Limitation on Expenditures of Candidate for Governor	*Object of Expenditure*	*Exemptions Allowed*	*Time of Filing Statement before or after Election*
Kansas, Gen. Stats., 1915, pp. 860-61	10% one year's salary for nomination; similar amount for election	Nomination and Election	Traveling and hotel expenses	Candidate within 10 days, comm. 30 days after primary and election
Kentucky, Acts, 1916, Ch. 13, pp. 57-62	$10,000 for nomination; similar amt. for election	Nomination and Election	None	15 days before and 30 days after both primary and election
Louisiana, R.S., V2, pp. 956-62, Acts, 1916, p. 64	$6000	Nomination	None	5 days after primary and 20 days after election
Maine, R.S., 1915, pp. 179-81	$1500	Nomination	Telephones, Stat., postage, telegrams, express, traveling	After primary
Maryland, Anno. Code, V. I, pp. 921-27	$25. for each 1000 voters up to 50000, $10. for each 1000 in excess of 50,000	Nomination and Election	Postage, telegrams, telephoning, stationery, printing, express, traveling, board	After primary and election
Massachusetts, Gen. Acts, 1923, Sec. 110	$5000 nomination; 10,000 election	Nomination and Election	None	After primary and election

Michigan, Pub. Acts, 1913, pp. 189-91	50% of one year's salary for nomination; similar sum for election	Nomination and Election	None	After primary and election
Minnesota, Gen. Stats., 1913, pp. 128-29	$7000	Nomination and Election	None	Before and after primary and election
Mississippi				
Missouri, R.S., 1909, Vol. 2, pp. 1924-25, Laws, 1917, p. 272	$200 for 5000 voters or less ;$4. for each 100 notes over 5000 and under 25,000; $2. for each 100 voters over 25,000 and under 50,000; $1. for each 100 voters over 50,000	Nomination and Election	Traveling expenses, hotel bills	After primary and election
Montana, Rev. Code, 1915, v. 3, pp. 977-83	15% of one year's salary for nomination; 10% for election	Nomination and Election	Payment to State for printing	After primary and election
Nebraska, R.S., 1913, pp. 657-59; Laws, 1915, Ch. 36	$100 for 5000 voters or less; $1.50 for each 100 over 5000 and under 25,000; $1. for each 100 over 25,000	Nomination and Election	Personal expenses, travel, hotel, stationery, postage, letters, circulars, telegraph, telephone	After primary and election

TABLE 6 (Continued)

	Limitation on Expenditures of Candidate for Governor	*Object of Expenditure*	*Exemptions Allowed*	*Time of Filing Statement before or after Election*
Nevada, Laws, 1913, Ch. 282; Laws, 1915, Ch. 251; Laws, 1919, p. 2723	20% of one year's salary for nomination; 20% for personal expenditure; 20% for contribution to committee for election, no party at any election to spend more than $15,000	Nomination and Election	Personal traveling and living expenses; postage, telegraph, telephone	Before and after primary and election
New Hampshire, Pub. Stats., Sup. 1901-13; pp. 71-72; Laws, 1915, Ch. 169	$1000 for nomination $1000 for election	Nomination and Election	None	Before and after primary and election
New Jersey, Comp. Laws of 1921, Ch. 196	$50,000 for nomination;$50,000 for election	Nomination and Election	None	After primary and election
New Mexico, Stats., 1915, pp. 634-5	10% of one year's salary for nomination; similar amt. for election	Nomination and Election	Traveling expenses and hotel bills	Before and after election
New York, Cahill's Cons. Laws, 1923, Ch. 41	$10,000	Nomination and Election	None	After primary and election

North Carolina, Sup. Code, 1913, V. 3, pp. 544-46, Laws, 1915, Ch. 101	Year's salary	Nomination	Transportation, board and lodging	Before and after primary and election
North Dakota, Comp. Laws, 1913, V. I, pp. 227-30	15% of year's salary for nomination and 15% for election	Nomination and Election	Printing, traveling	After primary and election
Ohio, Gen. Code, Sup. V. 2, pp. 1542-44	$5000	Nomination and Election	None	After primary and election
Oklahoma, Rev. Laws, 1910, V. I. pp. 750-53	$3000	Nomination	None	After primary
Oregon, Gen. Laws, Vol. 2, pp. 1388-99; Laws, 1913, Ch. 207	15% year's salary for nomination; 10 % for election	Nomination and Election	Payment to State for printing	After primary and election
Pennsylvania, Dig. Sup. 1905-09; V. 5, pp. 5446-48	No limit on amount but on kind	Nomination and Election		After primary and election
Rhode Island				
South Carolina, Code, 1912, Vol. 2, pp. 315-16	No limit on amt., but on kind	Nomination and Election		Statement to be filed but no definite time fixed

TABLE 6 (Continued)

	Limitation on Expenditures of Candidate for Governor	*Object of Expenditure*	*Exemptions Allowed*	*Time of Filing Statement before or after Election*
South Dakota, Laws, 1913, Ch. 203	50% of one year's salary	Election	Printing in political pamphlet	After election
Tennessee				
Texas, Civ. Stats., 1914, Vol. 2, pp. 2114-28				After primary and election
Utah, Laws, 1917, Ch. 92	$3000	Nomination and Election	None	Before and after priary and election
Vermont, Gen. Laws, 1917, Secs. 137, 156-159	No limit on amt., but on kind	Nomination and Election	None	After primary
Virginia, Code, Sup. 1916, V. 4, pp. 877-78	15 cents for every voter for highest party candidate at last election	Nomination	None	After primary
Washington, Codes and Stats., 1915, V. 1, pp. 1652-53	No limit on amt., but on kind	Nomination	None	After primary

West Virginia, Code, 1916, pp. 100-102	$75 for each county for nominations; same for election	Nomination and Election	None	Before and after primary and election
Wisconsin, Stats., 1917, pp. 98-101	$5000	Nomination and Election	None	Before and after primary and election
Wyoming, Laws, 1911, Ch. 41; Laws, 1915, Ch. 41	Nomination 20% of 1 year's salary, similar amount for election	Nomination and Election	Traveling and extra personal expenses	After primary and general election

This table is a summary of a digest of the laws of the various States relating to campaign expenditures made by Mr. W. E. Hannan, N. Y. Legislative Reference Librarian. The digest has been checked and a few corrections made by the present writer.

BIBLIOGRAPHY

Since this essay is primarily a study in public law, attention has been especially directed toward laws and court decisions. This study of state and federal legislation has been greatly expedited by several compilations of references and summaries, the most important of which are two bibliographical works prepared by the Legislative Reference Department of the Wisconsin Library Commission. The first is by M. A. Schaffner, 1906, and the second by S. G. Lowrie, 1911. A report of the Connecticut Commission on Laws Relating to Direct Primaries and Corrupt Practices at Elections, published in 1907, contains similar material. In 1905 G. L. Fox presented to the American Political Science Association a paper containing much valuable bibliographical material for this essay. There was published an abstract of the state laws concerning publicity of election contributions and expenditures in Senate Document No. 337, Sixtieth Congress, first session. The best and most complete list of references dealing with but a single phase of corrupt-practices legislation is contained in the compilation of state laws relating to the regulation and control of campaign expenditures, made by W. E. Hannan for the New York Legislative Reference Library in 1919.

Citations to court decisions have been largely drawn from the *American Digest, American and English Encyclopaedia of Law, Corpus Juris,* and G. W. McCrary's *American Law of Elections.* Judge McCrary has made the best treatment of elections from the purely legalistic side that has appeared. The last edition of his book, however, was printed in 1897, and therefore contains none of the recent legislation.

As a beginning for the non-legal side of the study of corrupt practices at elections, Graham Wallas' *Human Nature in Politics,* and Ostrogorski's *Democracy and Organization of Political Parties* are especially valuable.

Wallas' treatment of the psychology of voters is of great interest and importance, and Ostrogorski's gloomy view of democracy prepares one for the mass of material showing the unhealthy state of politics in many parts of the United States.

R. C. Brooks' *Corruption in American Politics and Life* presents an excellent study in the pathology of corruption. While this is a treatment of corruption in the various phases of business, journalism, and the professions, it deals especially with the political field. It is rather optimistic in tone and holds that the numerous exposures of corrupt practices in the United States furnish proof that the evil is recognized and is being fought. This work was published in 1910, prior to the passage of the federal law limiting campaign expenditures, and prior to much of the comprehensive state legislation.

James K. Pollock's recent book, *Party Campaign Funds,* contains a very able discussion of sources and expenditures of campaign funds and of the state and federal laws relating to use of campaign funds. Particularly important is the author's analysis of the party financial statements. Unfortunately for the present writer, Mr. Pollock's book did not appear until this study had been completed.

There are several studies of the American party system, its activities, and organization, which have been very useful for this essay. Chief among these are: H. J. Ford, *Rise and Growth of American Parties*; C. L. Jones, *Readings on Parties and Elections*; Jesse Macy, *Party Organization and Machinery*; S. P. Orth, *The Boss and the Machine*; P. O. Ray, *Introduction to Political Parties and Practical Politics*; J. A. Woodburn, *Political Parties and Party Problems in the United States*; R. C. Brooks, *Political Parties and Electoral Problems*; C. E. Merriam, *The American Party System.* Of the more general works on American government, Lord Bryce's *American Commonwealth,* and *Modern Democracies* have been very stimulating.

There is an abundance of literature dealing with specific cases of violations of the purity of elections. The difficulty here does not arise from the scarcity of material, but from the determination of the reliability of the material presented. Such investigations as those conducted by the New York Legislative Insurance Investigating Committee and by various Congressional investigating committees furnish reliable evidence. The value of the innumerable magazine articles lies not so much in the actual evidence of corruption as in the agitation for reform which they were arousing.

The publications of the National Publicity Bill Association contain the best material dealing with attempts at reform. Mr. Perry Belmont, the president of the Association, published many articles advocating advanced measures, and these articles undoubtedly had great influence in securing the enactment of corrupt practices legislation, especially by the Federal government.

Court Decisions

The following citation to court decisions dealing with the various aspects of corrupt practices legislation is more complete than the mere listing of the cases referred to in the body of the text. Citations to the more important cases dealing with the various points discussed have been placed in the footnotes, but it was felt that to place in the footnotes a long list of the less important cases upholding similar principles was not only unnecessary but would actually detract from the work. Here, however, are listed all the cases dealing with the subject which the writer by careful research has found and read, and the cases which have and which have not been referred to in the body of the text are designated.

Cases dealing with bribery: cited in Chapter i.

Abbott *v.* Frost, 2 Bart. (Mass.) 594.
Ashford *v.* Goodwin, 20 Pick. (Mass.) 428.
Bush *v.* Head, 154 Cal. 277.
Carothers *v.* Russell, 53 Iowa 346.

Clawson *v.* Bell, 169 Ind. 61.
Commonwealth *v.* Glass, 140 Ky. 589.
Commonwealth *v.* Roberts, 145 Ky. 290.
Commonwealth *v.* Sheeran, 145 Ky. 361.
Contested Election of Harry White, 4 Pa. Dist. 363.
Curran *v.* Taylor, 92 Ky. 537.
Diehl *v.* Totten, 32 N. D. 131.
Dishon *v.* Smith, 10 Iowa 212.
Douglas *v.* Commissioners Baker Co., 23 Fla. 419.
Exchange National Bank of Fitzgerald *v.* Henderson, 139 Ga. 260.
Grove *v.* Haskell, 24 Okla. 707.
Kenneweg *v.* Allegheny Co. Commissioners, 102 Md. 119.
Kundert *v.* City of Madison, 39 S. D. 43.
Johnston *v.* Grand Forks Co., 16 N. D. 363.
Leonard *v.* Commonwealth, 112 Pa. 607.
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INDEX

Absent voting, 64 f.
Addams, Jane, quoted concerning bribery of voters, 6
Alabama, details of law regulating campaign contributions and expenditures, 132 f.
Ammons, Gov., quoted concerning influence of newspaper editorials on election results, 95 f.
Anti-Saloon League of New York, subject to corrupt-practices act when participating in campaigns, 143 f.
Appointment to office, promise of, to influence votes is bribery, 19
Assistance to voters, fraudulent practices in connection with, 63; laws prohibiting such practices, 73-77
Attorney-Generals, opinions concerning efficacy of state corrupt-practices laws, 145-47
Australian ballot, description and history, 60-62; as preventive of fraudulent practices, 90

Bailey, Senator, quoted denying power of Congress to regulate primaries, 201
Ballots, paramount issue printed on, 101 f.
Ballot-box stuffing, 58
Belmont, Perry, quoted: reasons for regulation of campaign expenditures, 120; size of campaign expenditures, 180; value of corrupt-practices legislation, 247
Bliss, C. N., attitude toward publicity for campaign contributions and expenditures, 196
Blitz *v.* U. S., quoted concerning power of Congress to control elections, 171 f.
Borah, Senator, bill for publicity for campaign funds, 220; quoted concerning national control of elections, 253
Borah Committee, report of expenditures in campaign of 1924, 182; recommendations for regulation of campaign contributions and expenditures, 224
Boss rule, reasons for, 4; movements for elimination of, 4.
Bribery, types of, 6; difficulty to secure proof, 7; estimates of extent, 8; crime at common law, 8 f.; state constitutional provisions against, 9-12; state laws forbidding, 13, 258-63; sufficient to prove offer of bribe was made, 15; bribed voters given right to sue bribe-giver, 15 f.; purchasing certificate of registration, 16; laws against applicable to primary elections, 17; promise of appointment to office, 19; treating voters, 21; payment of taxes, 21-23; promise by candidate to perform an official act for benefit of private individual, 23; payment of naturalization fees, 24; payment for conveyance of voters to polls, 24; payment of watchers at polls, 25 f.; definition, 33 f.
Bryce, Lord, quoted concerning ways in which the will of citizens may be perverted, 4

Campaign funds, attempt to supply by state of Colorado,

144 f.; suggestions that they be supplied by the federal government, 249-51
Candidates, promises to perform official acts for benefit of private individuals held bribery, 23; requests for contributions from by religious and other organizations, 26; promises to serve for less than the regular salary of office, 27-29; promises to support measures, 31 f.; levies on for campaign funds, 115 f.; restrictions on soliciting from, 130.
Chandler *v.* Neff, quoted upholding constitutionality of Texas white primary law, 213 f.
Chicago, bribery of voters at elections, 6; violence at Senatorial primary of 1926, 38; causes for non-voting, 51
Church membership, expulsion from, to influences votes, 53
Civil service employees, campaign assessments on, 116-18; state restrictions on soliciting campaign contributions from, 129 f.; federal regulation of campaign contributions by, 183-88
Colorado, attempt to supply campaign funds by state, 144 f.
Contracts, corrupt award of, 118 f.
Contributions, campaign, reasons for regulating, 106 f.; from corporations, 107-11; made to both parties, 111-13; exacted by police, 113-15; levy on candidates, 115 f.; assessments on office-holders, 116-18; from contractors, 118 f.; restrictions on by corporations, 127-29; restrictions on soliciting from office holders, 129 f.; restrictions on soliciting from candidates, 130; miscellaneous restrictions, 130 f.; attempts to secure a large number of small contributors, 147 f.; reasons for federal regulation, 180-83; unsuccessful proposals for federal regulation, 204-07, 218-20; federal prohibition of by corporations, 188-94; Federal Corrupt-Practices Act of 1925, 221-25; suggestions for further regulation, 251-53; summary of state laws regulating, 279-83
Conveyance of voters to polls, 24
Cooke, M. L., statement of assessment of office-holders in Philadelphia, 117 f.
Corporations, campaign contributions by, 107-11; state restrictions on contributions by, 127-29; federal prohibition of contributions by, 188-94
County seats, towns may offer inducements to secure votes for, 29-31
Croly, Herbert, statements of Republican expenses in 1896, 181; description of Hanna's campaign methods, 190
Crumpacker "force" bill, 198 f.

Deficits, contributions to meet, 217 f.; contributions to meet required to be reported, 222
Distinguishing marks on ballots, 77-80
Doheny, E. L., campaign contributions, 112, 217 f.
Duvall, Mayor, violation of corrupt-practices act, 140 f.

Education, as means of reducing election abuses, 248 f.
Elections, rule for declaring void because of intimidation,

53-55; because of fraudulent practices, 87-89; control through gifts to political machines, 104 f.
Election officials, fraudulent practices by, 65; methods for securing higher type of, 68; court decisions concerning fraudulent practices by, 83-85; liability for refusal to permit elector to vote, 85-87; fraudulent practices by vitiate election results, 88 f.
Employers, intimidation of voting by employees, 46-50; required to give employees time to vote, 50
English Corrupt-Practices Act, 123-25
Ex parte Coy, quoted concerning indirect control of federal government over state elections, 168 f.
Ex parte Curtis, quoted upholding federal regulation of campaign contributions by civil service employees, 185
Ex parte Perkins, quoted concerning limitations on power of Congress to control elections, 172
Ex parte Seibold, quoted upholding federal control of Congressional elections, 163-66
Ex parte Yarborough, quoted concerning basis of right to vote for Congressmen, 158 f.; concerning conflict between federal and state control of elections, 166 f.
Expenditures, campaign, necessity for, 105 f.; demand for regulation of, 119 f.; genesis of regulation of in the U. S., 120-23; weaknesses of earlier acts regulating, 125 f.; state laws regulating, 131-33, 279-91; state court interpretation of laws regulating, 134-40, 141-44; opinions of state attorney-generals concerning efficacy of existing regulations, 145-47; parties attempt to show expenditures are not excessive, 148 f.; amount of, in national campaigns, 180-82; reasons for federal regulations of, 180-83; federal law limiting amount of, by candidates for Congress, 202-04; unsuccessful proposals for federal regulation of, 204-07, 218-20; Federal Corrupt-Practices Act of 1925, 221-25; suggestions for further regulation, 251-53

Federal Constitution, provisions concerning suffrage, 150 f.
Federal control of elections, debate in Virginia Convention concerning, 151 f.; early laws, 152 f.; 14th amendment, 153 f.; right to vote for candidate for Congress depends on U. S. Constitution, 158 f.; 15th amendment, 159-61; acts to enforce 15th amendment, 161-63; federal control of Congressional elections upheld in *ex parte* Seibold, 163-66; tendency toward federal control of state elections, 166 f.; court decisions concerning conflict between federal and state control, 168-73; presidential elections, 173-75; judicial interpretation of acts to enforce 15th amendment, 175-79; summary, 179
Federal Corrupt-Practices Act of 1925, 221-28
Federal regulation of campaign contributions and expenditures, reasons for, 180-83; restrictions on contributions by civil service employees, 183-

88; prohibition of contributions by corporations, 188-94; history of acts of 1910 and 1911, 195-204; unsuccessful proposals for, 204-07, 218-21; Federal Corrupt-Practices Act of 1925, 221-25

Federalist, quoted concerning federal control of elections, 152

Fifteenth amendment, provisions, 156; judicial interpretation, 159-61; Acts to enforce, 161-63; judicial interpretation of acts to enforce, 175-79; repeal of acts to enforce, 179

Ford, Henry Jones, quoted concerning expensiveness of a republican form of government, 106

Fourteenth amendment, provisions regarding suffrage, 153 f.; extent to which its provisions apply, 154-56; judical interpretation of, 156 f.

Fraudulent practices, types of, 56; in New York City elections, 57; ballot-box stuffing, 58; in registration, 58-60; in assisting voters to mark ballots, 63; in connection with absent voting, 64; by election officials, 65; crimes at common law, 68-70; state laws against, 70 f., 73 f., 269-74; state court decisions concerning, 71-73, 83-85; distinguishing marks on ballots, 77; state laws against apply to primary elections, 80 f.; rule for declaring elections void because of, 87-89; summary, 89 f.

Grandfather clauses of state constitutions invalid, 160 f.

Guinn *v.* U. S., quoted interpreting 15th amendment, 160 f.

Hanna, Marcus Alonzo, methods used in financing Republican campaign of 1896, 188-90

Hays, Will H., plan to secure campaign funds in 1920, 148; testimony before Walsh Committee, 217 f.

Illegal voting, state laws against, 73; state court decisions concerning, 73

In re Green, quoted concerning federal control of presidential elections, 173 f.

Insull, Samuel, campaign contributions, 112

Insurance companies, campaign contributions by, 108-10

Intimidation of voters, by physical violence, 36; in Reconstruction period, 37; at New York City elections, 37; at Philadelphia elections, 38; at Chicago primary of 1926, 38; crime at common law, 38; state constitutional provisions concerning, 39; state laws prohibiting, 40, 48, 264-68; definition of, 41; by police, 42-44; by military authority, 44 f.; by employers, 46-50; by social ostracism, 52; degree of, to invalidate an election, 53-55

Karem *v.* U. S., quoted interpreting 15th amendment, 177 f.

Knox, Attorney-General, opinion concerning assessments on office-holders, 186

La Follette, Senator R. M. Jr., *Autobiography,* account of evasion of property holding qualifications, 21; proposed Senate rule for regulating expenditures in Senatorial primaries, 232

Lexow Committee, report on police exactions in New York City, 113-15

Libel, suit for check on abuses of political advertising, 103

Lodge, Senator, quoted concerning power of Congress to regulate primaries, 201 f.

McAdoo, W. G., suggestion that campaign funds be supplied by the government, 250
McCall, Representative, bill requiring publicity for campaign contributions and expenditures in national elections, 197 f., 200 f.
McCrary, Judge G. W., Law of Elections, quoted concerning principles applicable to presence of armed forces at elections, 45; concerning invalidation of elections because of intimidation, 55; when elections will be declared void because of fraudulent practices, 88 f.
McGovern, Gov., quoted concerning influence of newspaper editorials on election results, 96
McPherson *v.* Blacker, quoted concerning federal control of presidential elections, 174
Madison, James, discussion of power of federal government over elections, 151 f.
Mazet Committee, report concerning levy on candidates in New York City, 115
Michigan, detailed regulation of political advertising in, 94
Military authority, intimidation of voters by, 44 f.
Minor *v.* Happersett, quoted interpreting 14th amendment, 157
Myers, Gustavus, *History of Tammany Hall,* evasion of property holding qualifications, 21; violence at New York City elections, 37; fraudulent practices at New York City elections, 57

National Bankers' Association, appeal for funds in campaign of 1896, 189 f.
National Committees, expenditures by, 180-82
National Municipal League, plan for model registration system, 59 f.; proposals for securing better election officials, 68
Naturalization fees, payment of to influence votes, 24
Neeley *v.* Farr, quoted concerning intimidation of employees, 49 f.
Neely, Senator, proposal for Senate Resolution establishing maximum sum that may be spent in Senatorial primaries, 231
Newberry case, Supreme Court opinion, 207-11; Senate action, 211 f.; effects of, 212 f.
Newspapers, state laws requiring publicity for ownership of, 99; theory of regulation of political advertising in, 102 f.
Newspaper editorials, influence in political campaigns, 95 f.; state laws forbidding purchase of support, 96 f.; purchase of support contrary to public policy, 97 f.
New York, act of 1829 limiting campaign expenditures, 120-22
New York City elections, intimidation of voters in, 37; fraudulent practices at, 57
Nixon *v.* Herndon, quoted denying constitutionality of Texas white primary law, 214-16
Non-voting, causes in Chicago, 51
Norris resolutions, denying seats in Senate to Smith and Vare, 236-40

Office-holders, campaign assessments on, 116-18; state restrictions on soliciting campaign contributions from, 129 f.; federal regulation of campaign contributions by, 183-88
O'Neal, Gov., quoted concerning requests from candidates for contributions by religious and other organizations, 26
Ostracism, threats of, to influence votes, 52 f.

"Paid Advertisements," paid political advertising must be designated as such, 91
Pennsylvania primary of 1926, use of paid watchers at polls, 25 f.; expenditures at, 228
Philadelphia, use of intimidation at elections, 38; assessment of office-holders, 117 f.
Plunkitt of Tammany Hall, activities of ward leaders, 6; assessments on candidates, 116
Police, intimidation of voters by, 42-44; exactions for campaign funds, 113-15
Political advertising, importance of, 91; state laws regulating, 91-94, 275-78; court decisions concerning, 93; theory of regulation, 102 f.; suit for libel check on abuses, 103
Presidential elections, lack of federal control over, 173-75, 193 f.; constitutionality of provisions of Federal Corrupt-Practices Act of 1925 applying to, 226-28
Primary elections, state laws against election abuses applicable to, 17-19, 80 f.; open *v.* closed primaries, 81-83; the Newberry case, 207-13; Texas white primary law, 213-17; exempted from Federal Corrupt-Practices Act of 1925, 222-25; Pennsylvania and Illinois of 1926, 228-42
Public opinion, importance of in checking election abuses, 248; high standards of public conduct demanded by, 255 f.
Publicity for campaign contributions and expenditures, genesis of state acts requiring, 122 f.; weaknesses of early acts, 125 f.; present state laws requiring, 131-33, 284-91; state court interpretation of laws requiring, 134-40, 141-44; history of federal laws requiring, 195-204; bill by Senator Borah for, 220 f.; Federal Corrupt-Practices Act of 1925, 221-25
Publicity pamphlets, 99-101

Reconstruction period, intimidation of voters, 37
Reed Committee report, activities of the Vare machine, 7; paid watchers at the Pennsylvania primary of 1926, 25 f.; violence at Philadelphia and Chicago elections, 38; fraudulent practices in Pennsylvania, 65; campaign contributions of Samuel Insull, 112; expenditures in Pennsylvania and Illinois Republican primaries of 1926, 229 f., 233-35, 240
Registration, purchasing certificates of, 16; fraudulent practices connected with, 58-60; model system, 59 f.; state laws prohibiting fraudulent practices in, 70 f.; state court decisions concerning fraudulent practices in, 71 f.
Roosevelt, President, recommendations to Congress: to prohibit contributions by corporations, 190 f.; to enact a publicity law, 196; campaign

funds to be supplied by the government, 249 f.
Root, Elihu, quoted on evils connected with campaign funds, 107
Rubey, Representative, proposal for constitutional amendment giving Congress power to regulate Congressional primaries, 231

Shotwell, J. T., quoted concerning decrease of corruption at elections, 254
Sinclair, Harry F., campaign contributions, 112, 217 f.
Smith, Frank L., contributions to campaign by Samuel Insull, 112; history of Senate's refusal to seat, 228-42
State constitutional provisions, bribery, 9-12; intimidation, 39; fraudulent practices, 70
State laws, bribery, 13, 258-63; intimidation, 40, 48, 264-68; fraudulent practices, 70-74, 269-74; political advertising, 91-94, 275-78; campaign contributions and expenditures, 127-33, 279-91
Stickney, Albert, quoted concerning purchase of machine support, 105
Suffrage, extension of in the U. S., 3; federal constitutional provisions concerning, 150 f.; 14th amendment, 153-54; 15th amendment, 156
Sugar Trust, campaign contributions, 112 f.
Sulzer, Gov., impeachment of, 140

Taft, President, recommendation to Congress to enact a publicity law, 200
Tammany, evasion of property holding qualifications for voters, 21
Tasmanian dodge, 62
Tax payment of voters as a form of bribery, 21-23
Texas, white primary law, 213-17
Treating voters, 21
Tweed Ring, corrupt award of contracts by, 118 f.

U. S. *v.* Cruikshank, quoted interpreting acts to enforce 15th amendment, 176 f.
U. S. *v.* McBosley, quoted concerning indirect control of federal government over state elections, 170 f.
U. S. *v.* Reese, quoted interpreting 15th amendment, 160, 175 f.
U. S. *v.* Souders, quoted defining intimidation, 41
U. S. *v.* U. S. Brewers' Asso., quoted upholding federal prohibition of campaign contributions by corporations, 192 f.

Vare, W. S., history of Senate's refusal to seat, 228-42
Vare machine, 7
Virginia Convention, debate in concerning federal control of elections, 151 f.
Viva voce voting, abuses under, 60
Voting machines, 66 f.
Vreeland, H. H., statement concerning contributions made to both parties in New York, 111

Walsh Committee, evidence before concerning campaign gifts, 217 f.
Watchers at polls, payment of, 25 f.
Weed, Thurlow, quoted concerning receipt of campaign contributions from corporations, 110 f.
Weyl, W. E., quoted on evils connected with campaign contributions, 106 f.
White primary law, 213-17

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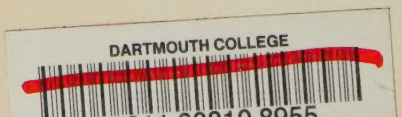

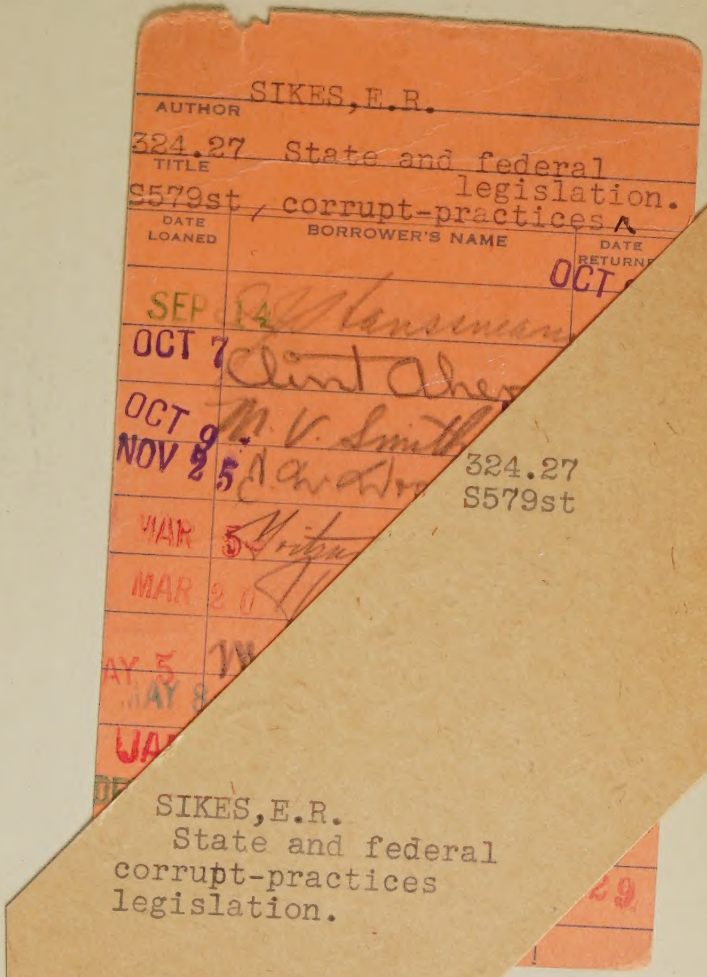
SIKES, E.R.
AUTHOR
324.27 State and federal
TITLE
S579st corrupt-practices
legislation.
DATE LOANED
BORROWER'S NAME
DATE RETURNED
SEP 14
OCT 7
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